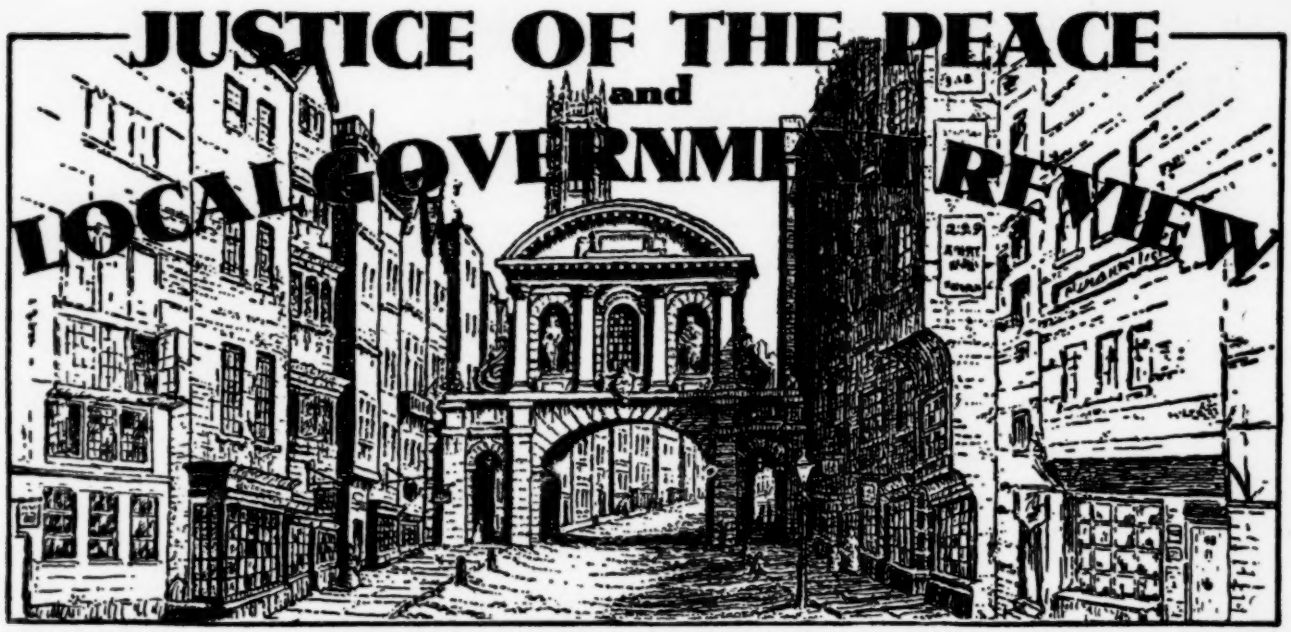

VOL. CXVII LONDON: SATURDAY, JANUARY 10, 1953 No. 2

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REPORTS

LEGACIES
FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions :—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary

THE CHURCH ARMY

55, Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

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RSPCA

Miss Agnes Weston's

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Trustee-in-Charge, Mrs. BERNARD CURREY, M.B.E.

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NEEDS.—Funds for carrying on Welfare Mission Work, and for General Maintenance.

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

LONDON COUNTY COUNCIL invites Admitted Solicitors to apply for permanent and temporary appointments. Salary £720 × £29 7*s.* 6*d.*—£837 10*s.* (commencing one point above minimum if admitted more than one year, two points if more than two years). Superannuation scheme. Persons temporarily engaged eligible to apply for subsequent permanent vacancies. For details and application form (for return by January 31) send st. ad. env. to Solicitor ("Solicitor Assistant"), County Hall, S.E.1. (1365).

THE STOKE NEWINGTON METROPOLITAN BOROUGH COUNCIL require an Assistant Solicitor on Grade A.P.T. VIII, plus London Weighting. The appointment is superannuable, and subject to the National Conditions of Service and to one month's notice on either side. Applications, stating age, education, professional qualifications, experience, with names and addresses of two referees, must reach the Town Clerk, Town Hall, Stoke Newington Church Street, London, N.16, by January 24, 1953.

SITUATIONS WANTED

FEMALE ASSISTANT, single, 5 years' experience, seeks change. Take charge of Collecting Officer's and other accounts and issue process under slight supervision. Shorthand 120. Typing 60. Excellent references. Box No. B.24, Office of this paper.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. **Ex-Detective Sergeant.** Member of B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries ; Divorce, etc. ; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel. : 26823 day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

NOTICES

NOTICE is hereby given that the Partnership theretofore subsisting between John Arthur Freeman, Owen Cecil Somerville-Jones, John Gerard Freeman and Philip England carrying on practice as Solicitors Notaries and Commissioners for Oaths under the style or firm of Brook, Freeman & Somerville-Jones has been dissolved by mutual consent as from December 31, 1952. The said John Arthur Freeman, John Gerard Freeman and Philip England will continue to practise at 7 St. George's Square, Huddersfield, under the style of Brook, Freeman & Co., and the said Owen Cecil Somerville-Jones will practise at Alexandra Chambers, 32 John William Street, Huddersfield, in his own name. All debts due to and owing by the said late firm will be received and paid respectively by Brook, Freeman & Co. at 7 St. George's Square, Huddersfield.

Dated this December 31, 1952.

BROOK, FREEMAN & CO.
O. C. SOMERVILLE-JONES

MEETING to Oppose the Re-introduction of Corporal Punishment, Conway Hall, Red Lion Square, Thursday, January 15, at 7.30. Speakers include Lord Chorley, Gerald Gardiner, Q.C., Cicely Craven, C. H. Rolph, and R. S. W. Pollard. Organized by The Ethical Union.

DEVON COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for this whole-time appointment at a salary not exceeding that within Grade A.P.T. VIII of the National Joint Council scale (£760 to £835 per annum).

Local Government and Conveyancing experience will be an advantage. The selected candidate will be required to pass a medical examination and contribute to the Council's superannuation scheme. The appointment will be terminable by three months' notice on either side.

Applications, stating present salary, age and details of experience, together with the names of two persons to whom reference may be made, should be forwarded to the undersigned at The Castle, Exeter, by not later than January 24, 1953.

Canvassing in any form will disqualify.

H. G. GODSALL,
Clerk of the Council.

BOROUGH OF STAMFORD

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors having previous experience in local government law and administration for the appointment of Town Clerk. The salary will be at the rate of £800 per annum rising by four annual increments of £50 to a maximum of £1,000 per annum.

The appointment will be in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks as to salary and conditions of service, and will also be subject to the provisions of the Local Government Superannation Acts, and to termination at any time by three months' notice on either side. The successful candidate will be required to pass a medical examination ; to reside within the Borough, and to commence his duties on July 20, 1953.

Application forms, to be obtained from the undersigned, stating full name, age, particulars of present and previous appointments, local government experience, together with names and addresses of two persons to whom reference can be made, must be delivered to the undersigned in envelopes endorsed "Town Clerkship" not later than Saturday, January 31, 1953.

Canvassing in any form will be a disqualification.

Applicants must state whether, to their knowledge, they are related to any member or senior officer of the Council.

Housing accommodation cannot be provided.

H. BALDWIN,
Town Clerk.

Town Clerk's Office,
Town Hall,
Stamford.

GOWER RURAL DISTRICT COUNCIL

Appointment of Clerk to the Council

APPLICATIONS are invited from Solicitors with previous Local Government experience for the appointment of Clerk to the Council. The salary will be at the rate of £1,000 per annum, rising by annual increments of £50 to a maximum of £1,200 per annum. A motor-car allowance of £100 per annum will be allowed. The successful candidate will be required to devote the whole of his time to the statutory and other duties of the post.

The appointment will be in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks as to salary and conditions of service and will also be subject to the provisions of the Local Government Superannuation Acts, and to termination by three months' notice on either side. The successful candidate will be required to pass a medical examination.

Applications, endorsed "Clerkship," giving full particulars of age, past appointments, qualifications, experience, and accompanied by three recent testimonials, must reach me by February 11, next.

Applicants must state whether, to their knowledge, they are related to any member or Senior Officer of the Council.

Canvassing, directly or indirectly, will be a disqualification.

J. H. FRANCIS,
Acting Clerk to the Council.

Council Offices,
7/8, Uplands Crescent,
Swansea, Glam.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 2. LONDON: SATURDAY, JANUARY 10, 1953

Pages 17-32 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper.]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

Failure to Call Witness

It is by no means uncommon for a defending advocate to comment on the fact that the prosecution has not called some witness who, according to the defence would have thrown light on the facts. An advocate is quite entitled to do this, though not entitled to draw attention to failure to call the defendant himself in a criminal case, Criminal Evidence Act, 1898, s. 1.

A recent pronouncement by Hilbery, J., is the subject of a Practice Note at [1952] W.N. 532. The learned Judge observed that it was quite irregular for counsel to call a witness, after the case had been closed, because of comment by the defence on the failure to call the witness. His Lordship distinguished this from evidence in rebuttal, and added that, if counsel considered that the disadvantages of calling a certain witness outweighed the disadvantages of comment and that his clients interests would be best served by not calling that witness, and had conducted his case on that basis, in his (his lordship's) view, he had no right after the defendant's case was closed to offer to call that witness. To make such an offer as a mode of eliminating comment that the witness had not been called was not a proper course to adopt.

It must be assumed that an advocate for the prosecution or for the complainant will consider carefully what facts he has to prove, what witnesses he can call to establish such facts, and generally how best he can assist the court to arrive at the truth. Sometimes he will refrain from calling a witness but will inform the defence about the name and address of that witness in case he may be of use to the defence. That is very different from calling a witness for the sole purpose of disarming criticism.

The position would, no doubt, be different if the presiding judge felt, even at a late stage in the trial that a witness ought to be called, not because of comment by counsel, but in the interests of justice. His right to call a witness is thus stated at 13 *Halsbury* 758: "The judge may (but in a civil case, only with the consent of the parties or in the absence of objection) call any witness whose evidence he thinks likely to elucidate the truth, or may at any time recall a witness who has already given evidence, to ask him further questions . . ." Leave is generally given to a party who may be adversely affected by the evidence of such a witness to cross-examine him.

Classifying Schools

Although opinions may still differ as to the desirability of committing boys and girls to a classifying school instead of sending them at once to the school in which it is expected that they will spend most of their time under the order, it has been made clear by the provisions of s. 6 of the Children and Young Persons (Amendment) Act, 1952, that Parliament intends that classifying schools should be used as much as possible. It is therefore important that juvenile court magistrates and others interested in the question should have an idea of the way in which the classifying school sets to work on the boys and girls about whom it has to make recommendations, and an article in the *Approved Schools' Gazette* dealing with the technique of assessment at the Kingswood School will be found useful.

The final report sent out by the classifying school represents a full appraisal of the boy's present position in the light of all the information available at the time of his transfer from the classifying school. It is meant to indicate what the classifying school considers to be a profitable line to be followed with the boy and his parents in his training.

"All staff must be encouraged and directed towards the careful and, where practicable, unobtrusive observation of the boys in all aspects of their life in the classifying school. On the whole it is reasonable to assume that most boys are very much 'on their guard' in the classifying school, but it is extraordinarily difficult for any boy to keep this up for hours on end, especially when he thinks he is not being watched . . . Great thought will be necessary in the organization of activities and social situations in order that observation may be varied and meaningful."

This is a sound procedure, for it may well be that this unobtrusive observation will throw more light on the subject of it than some of the psychological tests, however carefully designed, when most boys might be expected to be self-conscious and possibly suspicious.

Naturally, both the schoolroom and the workshop afford valuable evidence that can be properly assessed by a skilled staff, and it is worth notice that a small number of boys will also be attached for short periods of a half-day or two, to various workmen (*e.g.*, the gardener, the handyman and the cook) to see how they work under more normal working conditions. Housemasters and psychiatric workers also have opportunities, when on home visits, or when parents visit the school, of judging what are the relations between parents and the boy and what is his attitude towards his home.

The procedure may at first sight seem rather elaborate, and some people who suspect psychology and psychiatry may think there is too much of these. What matters most is the result achieved, and we believe that such statistics as are available indicate that the classifying schools have made few mistakes.

Defence Regulations

More than thirteen years have elapsed since the first Defence Regulations were made and more than seven years since the fighting ceased, but it is certainly not possible yet to sweep away all wartime controls and restrictions. However, some at least

have been revoked or modified, and the latest modifications cover a number of subjects. From December 7 the following were revoked: (i) Defence (General) Regulations, 1939, regs. 47BB (shipping), 54A (nuisances), 58AE (coalminers), 60 (factory workers), 60H (medical prescriptions), 62AA (dogs), 62B (pigs, etc. (Scotland)), 66 (agriculture), 68CA (housing) and 78 (undertakings), and certain parts of other regulations (relating to agriculture, employment, housing, offences, etc.); Defence (Encouragement of Exports) Regulations, 1940; Defence (Price Control) Regulations, 1945, reg. 6 in part; Defence (Recovery of Fines) Regulations, 1942, regs. 12 and 14 in part—(Defence Regulations (No. 2) Order, 1952, S.I. 2091)—(ii) Defence (General) Regulations, 1939, regs. 90 and 93 in part (offences, etc.) and 99 and 100-102 in part (supplemental provisions); Defence (Patents, Trade Marks, etc.) Regulations, 1941, regs. 1 (2) and 2 in part (Defence Regulations (No. 3) Order, 1952, S.I. 2093)—(iii) certain regulations (and parts of regulations) of Defence (General Regulations (Isle of Man), 1939; Defence (Recovery of Fines) Regulations ((Isle of Man), 1942 (Defence Regulations (Isle of Man) Order, 1952) S.I. 2092).

A number of other regulations expired on December 10. These are Defence (General) Regulations, 1939, regs. 42CA (unlawful gaming parties), 50 (power to do work on land) (except in so far as subsists under the Supplies and Services Act) and 55C (clubs); Defence (Armed Forces) Regulations, 1939, regs. 2 and 3; Defence (Industrial Assurance) Regulations, 1943; Defence (Trading with the Enemy) Regulations, 1940, regs. 8 and 9; Defence (War Risks Insurance) Regulations (S.R. & O. 1940 Nos. 771, 1142 and 1616, and 1945 No. 738); Defence (Women's Forces) Regulations, 1941—other existing Defence Regulations, and emergency laws, which were due to lapse or expire on December 10, continued in force for a further year (*see* the Supplies and Services (Continuance) Order, 1952, S.I. 1952 No. 2094; Emergency Laws (Continuance) Order, 1952, S.I. 1952 No. 2095; Emergency Laws (Miscellaneous Provisions) (Isle of Man), (Jersey), (Guernsey) Orders in Council, 1952, S.I. 1952 Nos. 2096, 2097 and 2098 respectively; Patents (Extension of Period of Emergency) Order, 1952, S.I. 1952 No. 2101; Registered Designs (Extension of Period of Emergency) Order, 1952 No. 2102).

The items relating to unlawful gaming parties and new clubs are of particular interest in connexion with the work of the police and the magistrates' courts.

Removal of Furniture as an Agricultural Operation

With reference to our note of the week under this heading in our issue of December 13, 1952, we now have the advantage of a letter from the Clerk of the Peace for the County of Somerset giving us precise information about the case in question. We are very much obliged to him for taking the trouble so to inform us.

It appears that the charge in question was made not under s. 4 of the Vehicles (Excise) Act, 1949, but under s. 35 of the Road Traffic Act, 1930, for using a motor tractor on a road without there being in force the requisite insurance policy. There was a policy covering the use of the tractor for "agricultural purposes," and the Appeal Committee had to decide whether the use of the tractor for the purpose of drawing on a road a trailer loaded with the employee's furniture, being moved from a council house to a tied cottage belonging to the farmer who owned the tractor, was covered by the terms of the policy.

The Appeal Committee heard evidence that locally it was a well-established custom for farmers to transport their employees' furniture, and an insurance company representative from the company concerned said that, in similar circumstance, his company had accepted claims under their policies and would have accepted a claim arising from any accident during these removal operations. It was in these circumstances that the case had to be considered, and the learned chairman announced "With considerable hesitation we have decided to dismiss this appeal with costs."

It would be improper for us to offer any comment on the matter at this stage because we are informed that the defendant has applied to the Appeal Committee to state a case for the opinion of the High Court. The point is certainly one of interest, and is of importance to farmers generally.

Interim Orders

An article at 111 J.P.N. 688 of this journal discussed the powers of courts of summary jurisdiction to make an interim order under s. 6 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, once there had been a finding on the facts. It was there pointed out that the decision in *Higgs* v. *Higgs* (1941) 105 J.P. 119 could not be reconciled with *Fulker* v. *Fulker* (1936) 101 J.P. 8, which is frequently quoted as authority for the proposition that a court cannot make an interim order once there has been a finding on the facts, and the suggestion was made that courts of summary jurisdiction would not be censured if they followed the guidance provided by *Higgs* v. *Higgs*, *supra*, rather than that laid down in the earlier case. Further support for this suggestion is to be found in the judgment of Lord Merriman, P., in *Wharton* v. *Wharton* [1952] 2 All E.R. 939. In this case the wife applied to the justices for maintenance, and the justices made an order for 30*s*. a week on the husband's admission of desertion. The order was apparently fixed at this low figure as the justices found (1) that the husband had suffered mental cruelty from the wife, and (2) there was still a chance of reconciliation. The wife appealed to the Divisional Court on the ground that this sum was inadequate, and the appeal was allowed. The observations of the court on the first finding are not of relevance here, but with regard to the second finding Lord Merriman said that if the justices wished to affect a reconciliation the proper way to do it was to adjourn the summons pending the intervention of the probation officer, awarding by way of an interim order such amount as they thought appropriate.

Of course the attention of the court had not been specifically directed to the question of the power of a summary court to make an interim order in such circumstances, but at least this case is a valuable indication of the way in which the High Court is likely to approach this question if it is formally argued before them.

Order Out of Disorder

Last November, the House of Commons resolved that a humble address be presented to Her Majesty under s. 8 of the Supplies and Services (Transitional Powers) Act, 1945, praying that the Act be continued in force for the further period of one year, and the fountain-head for subordinate legislation was thereby renewed yet again. With a production rate of many hundreds of new regulations a year, the problem of control of delegated legislation still remains accute. A great deal has been accomplished in the course of a governmental review designed to classify the regulations into manageable categories. Twenty-four regulations and six codes of regulations have disappeared since the present Government took office, and numerous other revocations are in contemplation—many of great interest to local authorities.

The problem bristles with difficulties, both administrative and legal. The problems of the last war brought immense numbers of regulations into existence, but more than seven years afterwards the nation is still enmeshed in an astonishingly

complicated net-work. The patient and laborious task of sorting out this tangle is proceeding steadily. The first and most attractive category under review comprises those regulations which we can be rid of; the second, those of a more lasting character which are to be embodied in legislation requiring their annual renewal by Parliament, and the third those so essential that they require to be framed in a permanent Act. The fourth category comprises the "doubtfuls"; that is to say, those which might be regarded as proper to be renewed in the shape of subordinate legislation for a further period. Most lawyers will hope that those regulations placed in this division will as rapidly as possible find their way into the category of "not required": this result seems probable, in view of the Lord Chancellor's recent utterance in the House of Lords. There Lord Simonds compared the multiplication of regulations to the breeding of fleas—"one seemed to breed another; it was like the big fleas that had little fleas on their backs to bite them."

At the same time (although the dangers of this kind of legislation are fully appreciated) it is widely recognized, as Viscount Samuel pointed out, that many of those regulations cannot be brought to a sudden end without completely disorganizing many services essential to our daily life. They are the penalty that a highly civilized community must pay, when faced by an intricate and swiftly changing pattern of economy.

In the premises, it is apt that there should, as announced by the Home Secretary, be an inquiry into the question how Parliament can best be enabled to exercise proper control over orders made under emergency legislation, and over delegated legislation generally. This is clearly a matter where it is for the House of Commons to put its own house in order, although the task may find its comparison in the labours of Hercules.

Accommodation Agencies

Sir Geoffrey Hutchinson, Conservative Member of Parliament for Ilford (North), has introduced a timely Private Member's Bill under the Ten Minute Rule to deal with various forms of swindle practised upon unhappy house-hunters. The public will be grateful to Sir Geoffrey and to his supporters who are from all the main political parties for his measure to deal with those sharks of the property agency world who, calling themselves "accommodation agencies," prey upon the hopes and sufferings of those seeking houses for themselves and their families in times of shortage.

We have all heard of gangs of persons who under pretence of carrying on a genuine agency business for the letting of accommodation exact payment of considerable sums of money in consideration of registering the requirements of the would-be tenant. Needless to say they have in many cases not the least intention or expectation of putting their clients in touch with a genuine potential tenancy. It seems that some of those agencies are taking as much as £600 a week in registration fees alone. In many of those cases it is, moreover, a condition of the tenant being accepted that he should pay a substantial sum usually far beyond his means for furniture or fittings or even for decorations. In many cases when the applicant calls at the address which has been given to him he finds that the accommodation is no longer available. What is more significant is that the landlord is often completely unaware even of the existence of the agent. In fact he has never entrusted the agent with the task of finding him a tenant at all. It becomes apparent that the address has been obtained from the columns of the local paper or from a shop window where those things are posted or elsewhere. No reputable house agent conducts his business on those lines and the new Bill accordingly makes it unlawful to accept money merely for registering the name and requirements of a person seeking the tenancy of a house or flat. It also makes it unlawful to accept money in consideration of supplying persons with the addresses or particulars of houses to let and prohibits the advertisement of a house without the authority of the landlord or his agent. Whilst the Bill is directed at those types of dishonest practices, honest house agency is, of course, excepted from its purview and people who accept payments for putting an advertisement in a shop or in a newspaper do not commit offences. The new Bill is designed to have force until December 31, 1957, when the housing shortage should have been appreciably diminished as the result of the present housing drive.

Leicester's Finances 1951/52

This is the title of one of the best produced volumes of municipal accounts we have seen for a long time. Mr. S. B. Bordoli, F.I.M.T.A., A.S.A.A., has achieved an attractive lay-out, and it was a good idea to include "The Leicester Ratepayer and his Money" (which has also been issued separately in booklet form) as a sort of prologue to the accounts proper.

Leicester has a population of 285,000 and a rateable value of £2,152,000. Its rateable value per head of population is thus £7 11*s.* 2*d.*, and consequently it is one of the many county boroughs which has lost considerably since the introduction of the equalization grant, although its net rate expenditure is equal to £8 2*s.* 3*d.* per head of population.

Net loan debt is close on £19 millions: over £10 millions having been borrowed for housing, and £2¼ millions for nationalized services, loan charges on the latter being fully reimbursed. Average rate of interest at the end of the year was only £2 18*s. per cent.* Transactions such as the issue in 1947 of £1¼ millions of stock at 2½ *per cent.* have helped to keep the average interest rate low.

Rates levied totalled 19*s.* 4*d.* but were insufficient to meet total expenditure by £243,000. Balances in hand were correspondingly reduced and at the end of the year amounted to £438,000, a comparatively small sum in relation to a total expenditure of nearly £7¼ millions. As a rating authority Leicester can, however, help itself by prompt issue of its rate demands (unlike counties which have to await the receipt of precept income) and is influenced by the good Midland tradition of excellent rate collection. Rates required to meet expenditure in full would have been 21*s.* 8*d.* and it is not surprising therefore that it has been necessary to increase the demand for the current year to 21*s.* 10*d.*

We like particularly the pictorial representation of the items constituting the weekly rate bill (4*s.* 5½*d.*) of an average householder, and the apposite comparisons of costs of other commodities such as cigarettes and beer. For this purpose the average householder is taken to be the occupier of a house rated at £12.

Useful tables of unit costs are given covering all major services. Education (which accounts for about half of all expenditure) involves costs of £26 12*s.* 8*d.* for pupils in primary schools and £50 2*s.* 8*d.* in secondary schools. The cost of a school meal was 1*s.* 3½*d.*; the cost of a civic restaurant repast 1*s.* 9¾*d.* Adverse financial results probably necessitated a policy change in relation to civic restaurants as only one of the nine restaurants operating in 1948 now remain but six cafés have been opened since that date. Number of main meals supplied at restaurants dropped in the same period from 849,000 to 201,000. It will be recalled that the Civic Restaurants Act, 1947, enacts that restaurants and ancillary activities which are not self supporting must close down unless the Minister of Food otherwise directs. Leicester has cut its deficit to £535 in 1951/52 and has been given permission to continue to operate until September 30, 1953.

THE JUSTICE OF STUART TIMES

By ERNEST W. PETTIFER

There is abundant interest in a study of the old-time justice of the peace at work, and this is especially true of the seventeenth century. The justice had so many contacts with the life of the county for which he acted, so many responsibilities and duties fell to his lot, that the record of his judicial work gives an absorbing picture of the life of the people over whom he ruled so firmly, albeit, from our twentieth century standpoint, with such rough-and-ready justice.

The minutes of the North Riding of Yorkshire Quarter Sessions, most competently transcribed and published by the North Riding Record Society in the 1880's, comprise eight volumes which are now, unfortunately, out of print. From these volumes an historian could build up an almost complete picture not only of the laws which were administered in the most northerly of the three Ridings of Yorkshire, and of those who administered them, but also of the people, the country folk and townsmen, who formed the population of the Riding. The records cover nearly the whole century, commencing with the year 1605, and they reflect the growing unrest during the first two Stuart reigns, the tremendous upheaval of the Commonwealth period, and the laxity and corruption associated with the restoration of the monarchy.

Sessions were held at the main market towns—Richmond, Northallerton, Malton, Thirsk—with occasional visits to the smaller towns such as Bedale, Helmsley, Kirbymoorside, Stokesley, etc. : and while the name of a justice may appear as attending two or three sessions in succession, in the main the justices seem to have divided themselves up into groups, each group being responsible for the courts in a given area.

Within the space at our disposal it is not possible to do more than briefly survey the business done at these sessions. Stealing, of course, takes a large place in the calendars, and we note at once that the thefts are often of articles of food, a clear indication of a hungry peasantry. Corn in the sheaf, corn in the sack, flour, butter, cattle, sheep and pigs, and a considerable number of geese, all figure regularly in the indictments. Another fact which at once attracts attention is that, whatever the value of the article or animal stolen (and the amounts given in many cases ran to several pounds) the offender was almost invariably found guilty of stealing to an amount not exceeding 10*d.* Throughout the century this practice of reducing the values to under a shilling is emphasized over and over again in the minutes, and clearly indicates the desire of juries or justices, or both, to save the offenders from death.

An entry from the Helmsley Sessions, January 11, 1625, can be quoted as an illustration from the few cases in which the value was not reduced, and in which the grim entry appears on the record, " Sentence, to be hanged by the neck." But even when this happened, all was not lost. In the case in question, Thomas Faceby, charged with stealing some unnamed property of the value of 15*s.*, promptly claimed benefit of clergy, as a clerk. Proceeding, the entry reads, " The Ordinary is called, and a book being handed to the prisoner, he reads as a clerk. Therefore to be branded and suffered to go at large. Branded by the Gaoler in open Court in the presence of the Justices." A few prisoners were not so fortunate, and were actually conveyed to York Castle and there hanged.

But in the main, the sentences were more merciful. By far the larger number were whipped, men and women. Sometimes a double dose of whipping was administered. Three farm labourers charged with stealing sheep's wool, and convicted at Thirsk Sessions in April, 1621, were sentenced to be whipped. An entry amongst the orders of the day with regard to two of them reads : " Sentence on above-named Jackson and Skelton—the constable of Harton is enjoined to take them, after having been whipped at Thirsk, to Bossall, and have them whipped again there according to his discretion." Here and there is an entry " To be whipped and taken to the House of Correction." Possibly these men were known to the justices as men of bad character, and suffered heavier sentences by reason of their previous misdeeds. The sentence " To be placed in the stocks for two hours next Sunday " appears here and there ; occasionally an offender was committed direct to the House of Correction, in one or two cases with a direction to the Gaoler that he or she was to be " disciplined." What form the " discipline " was to take, and the length of the detention, are never disclosed in the minutes.

Here and there appears an entry of the trial of a witch, as in the case of Elizabeth Crearey, found guilty " of most wicked and diabolical arts called inchantements and charms." The sentence was imprisonment for one year, and once each quarter to stand in the pillory. When released, to be bound for one year, and then to appear at the next Sessions. A special entry in the Orders of the day elaborated the sentence thus—" She is to be set on the pillorie once a quarter in some markett town in the Ridinge upon some fayre day or markett day, and after her release and year of good behaviour she is to stand to such further order as the Court shall sett down therein." It is quite clear that the justices did not intend to lightly loosen their grip on the bewitching lady!

Some of the quarter sessions dealt with very heavy lists. At Thirsk Sessions (October 8, 1634) in addition to disposing of a list of over 150 recusants and 248 alehouse-keepers with no licences, in manner not specified in the records, there were numerous cases of larceny, burglary, assault, shooting doves, four women for witchcraft, alehouse-keepers for keeping tippling-houses, and various defaulters who had not paid their contributions for lame soldiers or hospitals. In addition to this mass of business, the justices readily disposed of questions affecting bridges, settlement of poor persons, unruly folk who had not entered into recognizances, and several other matters. Several of the persons charged with offences were acquitted ; nevertheless six of them were committed to the House of Correction, apparently upon the principle that, if they had not committed the offences charged against them that day, they might have committed others and were safer in prison! Four men were whipped, and another sent to gaol.

The House of Correction at Richmond itself did not escape the oversight of the justices. George Shaw, the Master, for letting a prisoner go, was fined £10. He also lost his post. He resisted and refused to leave, but subsequently appeared at sessions, having evidently lost his appeal, in the capacity of " Late Master of the House of Correction " to claim moneys due to him as the former Master.

In this century, when the justices were almost entirely dependent upon the parish constables for carrying their decisions into effect, it is clear that many of these men, either from ignorance, or from reluctance to carry out the duties assigned to them, were slowing down the administration of justice very seriously. Here is a characteristic entry, found in the minutes of Quarter Sessions held at Sutton in the Forest of Galtres in May, 1615 : " Whereas on Friday last at the Sessions held at Sutton " (the form of the entry seems to imply that the minutes were written up some days after the Sessions had closed) " it was ordered that Christopher Ellis, Constable of Towlerton, should be fined 20*s.* for not executing a warrant directed to him by &c for &c (*sic*) during a space of six months, it is this day further

ordered that an additional fine of 20*s*. be imposed for his scoffing, scornfull and disdainfull speeches towards the Courte and the censure of the Justices occasioned by the former fine : and also that he be committed to the Sheriff to be by him conveyed to Yorke Castle &c, and a Mittimus (commitment) to be made &c."

Another entry of that day records the conviction of the Constable of Crake for refusing to furnish a list of alehouse-keepers, and a fine of 20*s*. imposed upon him, but there are many such entries.

The pillory played its part in the machinery of justice, although the cases quoted give the impression that this instrument was employed more often for the exhibition of witches, slanderers, scolds and others than for physical punishment such as was suffered by informers and others in this and succeeding centuries. Usually the North Riding Sessions directed that the offender should bear a paper on his head or chest setting " in large, fayre letters " the nature of his offence.

An alternative to the pillory in the case of the scold was, of course, the ducking stool or chair. The woman of this character who lived in a village which had no river or pond was fortunate, unless the justices directed that she should be taken to some place which offered the facilities of water and a ducking-stool. Anne Sweeting of Middleton was one of the unfortunates. Charged with being a notorious scold. a common drunkard and of lewd and evil behaviour (apparently without being brought before the court), the constable of Middleton was directed by warrant to have her ducked. The further sentence of the court was that if she should be " found drunken " she must either pay a fine or be set in the stocks for six hours—again, it will be observed, without being brought before the court.

(*To be concluded*)

THE END OF 68CA

By PATRICK STIRLING, *Barrister-at-Law*

The decision of the Minister of Housing and Local Government to dispense with Regulation 68CA was the outcome of prolonged discussions between the Minister and local authorities which had taken place during the preceding twelve months. In November, 1951, the Government considered the revocation of this Regulation, which enables local authorities to control the use for non-residential purposes of premises which had been used for residential purposes at any time since December 31, 1938. The Minister sought the views of the local authority associations ; many local authorities were of the opinion that the repeal of the Regulation would result in a much less effective control of the use of housing accommodation, particularly in non-county boroughs where the planning authority was not the same as the housing authority. It was further argued that local planning authorities were, often, too remote in distance from the housing authorities, and did not possess the intimate local knowledge of the housing authority, while the Regulation provided a simple and straight forward procedure which had worked well.

It has been made clear on the other hand that, while the Minister is in full agreement that there must be no unnecessary loss of housing accommodation, he is also anxious to get rid of all Defence Regulations which are not strictly necessary. The legal advisers to the Minister have been emphatic that the question of housing need is an integral part of planning, and is a matter which should, and can, be taken into consideration when dealing with planning applications, and that the present planning machinery is capable of securing the necessary control. It is further said that the present dual control wastes the time both of local authorities and of applicants and is a source of irritation to the public. The Ministry appear to have recognized that the remote control exercised by the local planning authority presents certain problems caused by lack of knowledge of local condition, but emphasize that the system of dual control, which is the only alternative, was unnecessarily wasteful of manpower.

At a joint conference it was suggested that this was a matter on which local authorities must be prepared to trust local planning authorities to safeguard their interests, and that the planning authorities, in their turn, would be most anxious to make use of local knowledge and experience. Finally it has been urged by the Government, on more than one occasion, that it is a matter of principle to rely on statute rather than on regulation wherever possible.

In spite of these assurances the repeal of this Regulation still gives misgivings to local authorities. Two problems, in particular, cause concern. In the first place it is thought that planning control cannot be fully effective in areas zoned for purposes other than residential. For example, it may be difficult for a planning authority to justify its action on planning grounds if it decides to refuse an owner of property permission to change the use from residential to commercial, where that property is situated in an area which has been scheduled, under the planning authority's own plan, for commercial use. The second aspect of the problem which has given some concern is that in many cases the planning authority had already given permission for a change of use, and this change of use was restrained only by the existence of this Regulation. It was feared, that when this Regulation disappeared, there would be no legal restraint to prevent the owner from changing the use from residential to commercial forthwith.

The Home Secretary announced (Hansard, 1952, vol. 507 ; col. 2078) that the Minister of Housing and Local Government had completed his discussions with the local authority associations and with the London County Council about Regulation 68CA, and was satisfied that it was necessary to keep a firm check on the transfer of housing accommodation to other purposes. On the other hand the Minister was satisfied that adequate powers of control were given by the Town and Country Planning Act, 1947, and that, as a result, the Regulation should not be continued. In making this announcement the Government made it clear that they had done their best to dispel what appeared to them to be an ill-conceived fear, and to meet legitimate objections.

The objection that planning powers are inadequate to conserve housing accommodation is met by the point that all demands on land use, of which the provision of housing is one, must be " material considerations " and come within s. 14 (1) of the Act of 1947 : this is so even where an authority's development plan has zoned an area for commercial use and, in spite of this, there is nothing to stop the planning authority from refusing permission for the time being, on grounds of housing shortage, for the conversion of a house into an office. It is said, in support of this argument, that just as in certain circumstances it is open to a planning authority to grant temporary permissions for the continuation of non-conforming uses, so it is open to the planning authority to give temporary refusals for a change of use which would be in accordance with the plan. This point will be made clear in a circular about to be sent to all local authorities.

The second objection that the enforcement procedure under planning legislation is much slower than the procedure under the

Regulation is recognized as a point of substance. In reply it is said that the provisions of planning legislation are fairer to the objector, and it is right that the safeguards provided by s. 23 should be made available to all objectors. There is much to be said for the slower procedure, under which a man has an opportunity to put himself right with the law before criminal proceedings are taken against him under what were, strictly, emergency powers.

The third objection, that planning authorities are often too remote and do not possess the necessary local knowledge, is to be met by the making of a Direction under the General Development Order. There is no intention to abandon present policy in face of the acute housing shortage, and an instruction is being sent to planning authorities to advise them to consult housing authorities in all cases where a change of use from residential is involved. The effect of the proposed Direction under the General Development Order will be to require local planning authorities to undertake this consultation when any proposal involves the loss of housing accommodation, and to arrange for a reference to the Minister in case of disagreement between authorities.

In spite of the assurance now given to local authorities, there remains a certain misgiving—not confined to any one party. It is the intention of the Government to see that the planning procedure works well and fairly, and it appears to be certain that, if a housing authority is not satisfied with the way in which a planning authority intend to deal with a proposal, then the matter will ultimately be referred to the Minister.

At the conclusion of the debate (in order to allay the disquiet which still existed) an additional assurance was given that the Minister would do his best to ensure that planning authorities should refer to him for decision any case where a substantial amount of housing is involved and where agreement is not reached. The Government is determined to eliminate duplication and unnecessary processes, and believes that both government departments and local authorities should show an equal willingness to surrender controls which were imposed under emergency powers. Only experience will now show whether planning legislation can safeguard in adequate measure the limited supply of housing at a time of acute shortage.

Since the above was written a copy of Circular 94/52 from the Ministry of Housing and Local Government has just come to hand. This follows the lines indicated to the House of Commons and contains a copy of the Town and Country Planning (Housing Accommodation) Direction, 1952. In order to ensure that the views of housing authorities are fully known to local planning authorities before decisions are taken on applications to change the use of housing accommodation, the Minister has provided, by this Direction, for consultations between the housing and planning authorities on these applications. The Direction also provides that in the event of disagreement between the authorities on such a case, the local planning authority shall refer the application to the Minister.

THE TRAMP

By JOHN MOSS, C.B.E.

Until a few years ago the appearance of the tramp at magistrates' courts was a regular occurrence. Sometimes he was charged with refusing to perform his allotted task in the casual ward and sometimes he committed the more serious offence of assaulting an officer. He was generally a nuisance to all concerned and not the least to the police. Then came the war. Some of them got jobs and some of the younger ones went into the Forces. The number using the casual wards was gradually reduced by the closing of wards and it has been suggested that the few remaining ones must have been lost in the depths of Wales.

Before the war the situation of casual wards was based on the theory that a man could walk fifteen miles from one ward to another where he was required to stay for two nights and in the intervening day was reasonably well fed and had to perform a modicum of work and also on the morning of his discharge. As compared with the time when the subject of the care of casuals was closely investigated by a departmental committee he was, in the view of some people, pampered. He had a hot bath when he reached his destination and the habitual tramp was a cleaner person than many working men. When the war ended people began to wonder whether the tramps would return in large numbers. But this has not been the position. Twenty years ago there were sometimes 17,000 persons sleeping in casual wards on one night. Immediately before the outbreak of war the number was about 7,000. By 1948 the maximum had gone down to 2,000 and, with some fluctations, has remained at about that figure.

The responsibility for casuals, or as they are now called " persons without a settled way of life " was transferred to the National Assistance Board by the National Assistance Act, 1948. Clearly, however, it would have been extravagant to set up throughout the country hostels which would only be required for small numbers. It was therefore agreed by local authorities, although with considerable reluctance, that they should act as agents for the Board in providing all necessary accommodation. When the Bill was debated in the House of Commons an undertaking was given that the Board would make a report within three or four years and that the administration of this service would than be reconsidered. Accordingly the Board has made a report to the Minister of National Insurance which has since been published.

In the past four years the Board have closed without replacement forty-one centres in England and Wales. Six other centres have been closed and replaced by three new centres : ninety-five centres remain of which eighty-one are connected with other accommodation. The precise arrangements vary considerably and although the staff used is generally common to the establishment, there are a few places where the casuals occupy rooms in the same building as other persons. The total payment paid to local authorities including Scotland, is about £280,000 a year, equivalent on an average to about 7*s*. per casual per night, though the cost varies greatly.

FUTURE POLICY

The Board, in their report, discuss the basis on which further administration should be arranged and as to whether the service should be a central or a local responsibility. Before the Board assumed responsibility the cost of providing for casuals was pooled in most parts of the country. Joint Vagrancy authorities had been established so as to ensure uniformity of administration and equalization of cost over a large area. It was a logical step to make the service a national responsibility when the new Act came into operation. These arguments still have great force, but it is suggested in the Board's report that there are considerations tending the other way. There is a great shortage of lodging house accommodation throughout the country and if only more were done in this connexion some of the problems of the casual might be met. A man who goes to a reception centre is still under some form of discipline ; he must obey the regulations under which he must do some work. Although it would be

impossible to get precise information it would be interesting if an inquiry could be made as to the numbers of casuals who would be likely to use lodging houses if they were available. It would be interesting also to ascertain whether the numbers of men now using reception centres is proportionally less in those few areas where lodging house accommodation is available. A survey would also be needed of the lodging houses to ascertain to what extent they are used by men requiring strictly temporary accommodation for a few nights as distinct from those who are using them more or less permanently because they cannot find other lodgings. It might help if housing authorities provided more hostels under the Housing Acts, 1949, for men who are in regular work. If, then, more accommodation was made available in lodging houses it might be one step forward to the termination of the present system of reception centres.

It is suggested in the report that some of those for whom local authorities must provide accommodation in institutions are of a similar type to many who use the reception centres and that on the other hand local authorities sometimes find it convenient to use reception centres temporarily for persons for whom they are required to provide residential accommodation but do not come within the category of persons who are the responsibility of the Board. Sometimes these cases are very border-line.

EXPERIENCE OF INDEPENDENT CENTRES

Local authorities have always contemplated that in due course the Board should provide their own independent centres. If the number were considerable, this would no doubt be pressed now, but the numbers are not large and the heavy expense of independent centres cannot be justified. Clearly in some places the joint user arrangements should be terminated as quickly as possible. It is certainly undesirable that tramps (and that is still a good word to use) should associate in any way with hospital patients who are accommodated in joint user establishments. This is bad physcologically if on no other grounds. Then it is not good for them to associate with the better type of old people for whom local authorities are providing improved accommodation. As a whole the casuals do not deserve any better accommodation than they are now having. Those who are young, as many of them are, should not be made too comfortable. On the other hand if they are getting on in years they should be encouraged, as they are now done, to settle down in an institution. This has always been the policy of the vagrancy authorities. Help those who are deserving—by trying to persuade the elderly to settle down in an institution and trying to get the younger to settle down to a normal life—both difficult tasks. For the intermediate class—and even those in the other classes who will not respond to good influence—there should be no coddling. Perhaps we have gone too far in providing properly for their material needs. More discipline is required—prosecutions whenever possible. Work in the centres should be made more onerous. Some years ago, when the problem was much greater, labour colonies were suggested as used to be the practice in Belgium. There the police rounded the sleepers-out in Brussels at night and locked them up. After going before a magistrate, they were sent to a Labour Colony where they were detained for months or years, and later released on somewhat similar lines to the practice in the administration of approved schools for juveniles. The size of the problem does not justify this course, but could not more be done by the police? After a man in a reception centre is brought before the court for an offence, could not the magistrate be more severe—if only as an example to others?

The experience of the Board in providing independent centres will be watched with interest. Should they be used for much wider areas and should there be additional powers of detention in suitable cases—partly for the men's own good and partly for the protection of the public? In the meantime discussions will no doubt be going on between local authorities and the Board in order to reach a temporary solution in some areas.

JOINT USER ACCOMMODATION

When the new legislation was introduced it might have seemed from speeches in parliament, including those by some Ministers, that every one for whom local authorities would be providing residential accommodation would be nice old ladies and gentlemen who would live happily together in the modest hotels to be provided. No one can deny that the small Old Peoples Home were and are needed. It must not, however, be overlooked that a proportion and perhaps a substantial proportion of the old people are not suitable for such Homes. Many of them do not know how to keep themselves clean; some are anti-social. These differ little from some of the casuals. As local authorities develop their residential arrangements they may find it necessary to provide specially for these classes in the older institutions. In such circumstances is there any need to provide separate accommodation for the casual? Could he then be housed with the ordinary residents? It may be argued that this may mean only one institution being available in one county or even a group of areas. Does this matter? The present-day casual is not such a great walker as he used to be. It is not only the youth on holiday who hitch hikes. Many of the casuals do likewise. He soon knows where he is going to find a rest for the night and even to discriminate as to the place where he will be most comfortable. If he knows that he has to go thirty of forty miles in one direction he will not go ten miles in the other direction. If, however, he will not go where accommodation is available and he prefers to sleep out the police should take action.

The war showed that casual wards could be closed without any serious consequences. There are no casual wards in any of the Commonwealth countries, but it is not only in this country that some men cannot help wandering. Humanitarian considerations can go too far. We must be realists. Help those who are deserving and take considerable trouble in trying to help them but penalize those who are not deserving. This is no doubt easy as a doctrine but difficult to put into practice; why not go on trying?

MAGISTERIAL MAXIMS IV

A Certain Officer of Police, of High Rank, was accustomed, when Presenting his Case to the Court, to show more Zeal than Discretion; to display, in fact, a constant Desire to " Rub it In " well and truly no matter how Small the Offence nor inoffensive the Offender.

Although such Conduct did not fail to meet with the Disapproval of the Bench, and of his Superiors, they had otherwise No Fault to Find with him in the Execution of his Duty. He, having been brought up in what is known as the Old School was ever prone to assume all Men Guilty unless they Proved themselves to be Innocent of that with which they Stood Charged.

It chanced, However, on one occasion, that Pursuing these Undesirable Tactics he succeeded in Getting Convicted one who, being in Truth Guiltless, would not Lie Down to the Injustice, and who instead of Appealing to the Appeals Committee or Having a Case Stated for the Consideration of the High Court, Raised the Matter with his Member of Parliament, who proceeded forthwith to ask some Awkward Questions in the House, to the No Small Embarrassment of the Home Secretary.

After much Deliberation, and a searching Inquiry—which not only revealed the Police Officer in an Unfavourable Light, but also reflected little Credit on the Bench—a Free Pardon was granted, and in a certain Police District a Resignation was, not too tactfully, suggested.

In his Suburban Villa, the Retired Police Officer, realised, though too late, the verity of the adage:

Prosecuteo, non Persecuteo, which being freely rendered and equally freely translated may be said to mean " The Prosecution is not always right, even though brought by the Police Authority, or again in Doggerel Latin:

Justiciam fiat, custodios ruat.

AESOP II.

MISCELLANEOUS INFORMATION

IS A GOLDFISH AN ARTICLE

[*The Clerk of the Magistrates' Court at West Ham, Mr. G. V. Adams, courteously supplied us on December* 16 *with a transcript of the decision by the learned magistrate, Mr. J. P. Eddy, Q.C., of which we spoke at* 116 *J.P.N.* 817. *Because of Christmas, however, our issue dated December* 29 *had gone to press before the transcript reached us, thus depriving us of the opportunity of dealing with the decision otherwise than upon the basis of* The Times *and other newspaper reports. At the request of Mr. Eddy, since conveyed to us by Mr. Adams, we now have pleasure in publishing the transcript. We understand that, as we hoped, the point at issue is to be taken to the Divisional Court.*]

At West Ham a rag dealer was summoned to answer an information of the town clerk of the county borough alleging that the defendant did unlawfully, whilst engaged in collecting rags and old clothes, deliver a goldfish to a person under the age of fourteen years, contrary to s. 154 of the Public Health Act, 1936.

Giving his decision on December 11, the stipendiary magistrate, Mr. J. P. Eddy, Q.C., said that s. 154 provided that no person should, whilst engaged in collecting any such articles, sell or deliver any article of food or drink to any person, or any article whatsoever to a person under the age of fourteen years. A person who contravened this provision was liable to a fine not exceeding £5.

The history of the enactment showed that a quarter of a century or so ago it was a common practice in many places for rag and bone dealers to give toys and other articles in exchange for rags and bones. Inasmuch as the toys and other articles were carried in carts containing rags and bones it was found that vermin and contagion were spread. So it was that the earlier enactment, s. 73 of the Public Health Act, 1925—now replaced by s. 154 of the 1936 Act—prohibited such dealers from selling or distributing "any article of food or any balloon or other toy."

The word "toy" gave rise to difficulties of interpretation. The words of the 1936 Act were clearly wider. Rag collectors and dealers, whilst engaged in collecting or dealing in rags, old clothes, or similar articles, must not sell or deliver any article whatsoever to a person under fourteen years of age. There was no definition of the word "article" in the Act. There was nothing to indicate that it was to be construed in other than its literal and popular sense. Moreover, there had been no suggestion before him that it might be prejudicial to the health of a child to receive delivery of a live goldfish from a rag collector or dealer, whatever might be said about a balloon or other toy.

There was no direct authority on the proper construction of the provision now before him. It was true that in a case decided over ninety years ago the Court of Common Pleas held that a horse was an "article," but a very different statutory provision was in question there. That was the case of the *Llandaff and Canton District Market Company* v. *Lyndon* (1860) 8 C.B. N.S. 515. The offence there charged was selling outside certain limits "articles" on which a toll was imposed in a schedule to the Act creating the offence. The Court (Erle, C.J., and Williams and Willes, JJ.) held that the word "articles" in s. 25 of the Act was intended to comprise everything in respect of which a toll was payable, and horses were specifically mentioned in the schedule.

That authority was referred to in a case in the High Court of Justice in Northern Ireland in 1931—*R.* (*Urban District Council of Portadown*) v. *Chairman and Justices of the Peace for the County of Armagh* [1931] N.I. 209. There the Court was considering s. 1 of the Street Trading (Regulations) Act (Northern Ireland), 1929, and the material words were "any article or thing." The Court held that a live pig was an "article or thing" within the meaning of the section. Chief Justice Moore, in delivering the judgment of the Court, said he was disposed to consider that "article" was appropriate to inanimate chattels: "things" both to animate and inanimate.

It was, the stipendiary magistrate thought, a well-settled rule of construction that where a penal enactment was reasonably capable of two constructions the Court would give it the more lenient construction which avoided the imposition of a penalty. In other words, the person against whom the penalty was sought to be enforced was entitled to the benefit of any doubt which might arise on the construction of the enactment.

In the case now before him the local authority had failed to satisfy him that the word "article" included goldfish. On the contrary, he saw no reason why it should not be construed in its popular sense. Nobody in ordinary conversation would refer to a goldfish as an "article." He thought that the word "article" in the enactment in question meant an inanimate object. It followed that, in his opinion, the goldfish escaped this statutory ban. Accordingly he dismissed this summons.

MINISTERIAL RESPONSIBILITY FOR SLAUGHTER OF ANIMALS AT SLAUGHTERHOUSES AND KNACKERS' YARDS

On January 1, 1953, the Ministry of Food became the central Department responsible in England and Wales for most of the statutory functions relating to slaughterhouses and knackers' yards. This is in accordance with the statement on Ministerial responsibility for the slaughter of animals made by the Prime Minister in the House of Commons on July 21, 1952.

An Order in Council has been made which came into force on January 1, 1953, and transfers from the Minister of Housing and Local Government to the Minister of Food all statutory functions relating to slaughterhouses and knackers' yards, except the following:

1. The confirmation of Compulsory Purchase Orders for the provision of public slaughterhouses, which remains the responsibility of the Minister of Housing and Local Government;

2. The approval of charges for the use of public slaughterhouses; this function is transferred by the Order in Council from the Home Secretary to the Ministry of Housing and Local Government.

Local authorities will continue to be responsible for the execution and enforcement of the legislation to which the Order in Council relates.

The transfer of these functions applies only to England and Wales. The position in Scotland is unchanged.

ROAD ACCIDENTS—OCTOBER AND NOVEMBER, 1952

Reports so far received by the Ministry of Transport show that road casualties in November totalled 16,259. This includes 412 killed and 4,186 seriously injured.

Compared with November, 1951, the total figure is less by 2,793, and the numbers of killed and seriously injured by 151 and 662. But a few reports are probably still outstanding.

The final casualty total for October was 17,859, or 239 more than was previously announced. This total is 738 less than in October, 1951. There were sixty-two fewer killed, but 101 more were seriously injured.

ADDITIONS TO COMMISSIONS

BRECKNOCK COUNTY

Mrs. Olive Monica Evans, Coed Owen Farm, Cwmtaf, Cefn, Coed, nr. Merthyr Tydfil.

HERTFORD COUNTY

Mrs. Evelyn Mary Jarrett, Punchardon Hall, Willian, nr. Hitchin.

ST. ALBANS CITY

Arthur Blott, 26, Lemsford Road, St. Albans.
Mrs. Violet Evelyn Cape, 78, Ramsbury Road, St. Albans.
Cyril James Collinge, 60, Marshalswick Lane, St. Albans.
Donald Tom Newman, 1, Lemsford Road, St. Albans.
Herbert Frederick Stovell, 25, Alban Avenue, St. Albans.

WEST RIDING (*contd.*)

Joseph Ernest Payne, 25, Blyth Avenue, Rawmarsh, Rotherham.
Mrs. Mary Powell, The Grey House, Spofforth Hill, Wetherby.
Leonard Roberts, Wellfield, Pickhill, Uppermill, nr. Oldham.
Donald Rowley, Penravin, Bostin Spa.
Mrs. Phyllis Laura Severns, Darley, East Lane, Stanforth, Doncaster.
Mrs. Elizabeth Ellen Smith, Donnithorne, Greenfield, nr. Oldham.
Robert Colvin Spark, Acacia House, Station Road, Ackworth, nr. Pontefract.
Harry Turner Spence, 77, West Busk Lane, Otley.
Mrs. Mary Thompson, 50, Nanny Marr Road, Darfield, nr. Barnsley.
Mrs. Janet Sybil Thorp, 4, Regent Road, Ilkley.
James Reginald Benson Turner, Gwynfa, Calverley Lane, Horsforth, nr. Leeds.
Mrs. Nora Turner, Delves House, Selby Road, Thorne.
Mrs. Enid Boston Walker, Bloomfield House, Silkstone Common, nr. Barnsley.
William Whiteley, Caley Hall, Pool-in-Wharfedale.
Mrs. Muriel Victoria Wilby, Denby House, Denby Dale, nr. Huddersfield.
Thomas Winkle, 42, West Street, Wath-on-Dearne.
Commander Reginald Seymour Young, R.N. (Retd.), Birks House, Sedbergh.

NEW YEAR HONOURS

KNIGHTS BACHELOR

Beazley, His Honour Hugh Loveday, Common Serjeant of the City of London.
Radcliffe, Clifford Walter, clerk of the Middlesex County Council.
Truscott, Alderman Denis Henry, lately sheriff of the City of London.
Herchenroder, M. J. B. F., Q.C., Colonial Legal Service, Chief Justice, Mauritius.

ORDER OF THE BRITISH EMPIRE

K.B.E.
Bolitho, Lt.-Col. Edward Hoblyn Warren, H.M. Lieutenant for the County of Cornwall, lately chairman Cornwall County Council.

C.B.E.
Bird, Alderman W., mayor of St. Albans.
Chaytor, Lt.-Col. J. C., chief constable, North Riding.
Plowman, H., town clerk, Oxford.
Willis, Cdr. W. J. A., R.N. (Retd.), chief constable, Bedfordshire.

O.B.E.
Ayrey, H., town clerk of South Shields County Borough Council.
Bates, A., county planning officer, West Riding of Yorks. County Council.
Jenkins, R. C. M., deputy chief constable of Kent.
Moffatt, W. H., city inspector, Royal Ulster Constabulary.
Slater, Mrs. Dorothy, chairman Lynton U.D.C.
Thesiger, R. E. K., legal assistant, Lord Chancellor's office.
Williams, Lieut.-Col. W. J., chief constable, Gwynedd Constabulary.

M.B.E.
Braby, E. J., assistant chief constable, Berkshire.
Clemlinson, T., chief superintendent and deputy chief constable, Salford City Police Force.
McQuitty, W. J. C., first cl. clerk, Supreme Court, Northern Ireland.
Roman, P. J., chief superintendent, Metropolitan Police Force.
Rothwell, R., clerk Alnwick R.D.C.
Scurr, J. F. T., chief superintendent, Metropolitan Police.

ORDER OF ST. MICHAEL AND ST. GEORGE

C.M.G.
Bathurst, M. E., legal adviser to U.K. High Commissioner in Germany.

BRITISH EMPIRE MEDAL

Campbell, C. M., chief inspector, Lancashire Constabulary.
Tetlow, E., inspector, Dudley County Borough Police Force.
Tribe, R., inspector, Southampton Police Force.
Wright, J. A., outdoor officer and supervisor, Borstal Division, Central After-Care Association, London.

THE KING'S POLICE AND FIRE SERVICES MEDAL

Watson, T. M., chief constable, Walsall Borough Police Force.
Mighall, Lieut.-Col. H., chief constable, Southport Borough Police Force.
Box, C. G., chief constable, Southampton Borough Police Force.
Bacon, R. R. M., chief constable, Devon Constabulary.
Greenwood, Lieut.-Col. R. B., assistant chief constable, Lincolnshire Constabulary.
Iveson, A., superintendent and deputy chief constable, Dewsbury Borough Police Force.
Mitchell, R. B., superintendent, Norfolk Constabulary.
Lockley, T., detective chief superintendent, Staffordshire.
Lyons, R. T., superintendent, Glamorgan Constabulary.
Cherrill, F. R., chief superintendent, Metropolitan Police.
Duncan, J. D., chief superintendent, Metropolitan Police.
Robinson, F. F., superintendent, Metropolitan Police.
Fulton, A., head constable, Royal Ulster Constabulary.

PERSONALIA

APPOINTMENT

Mr. R. A. Robinson, O.B.E., formerly chief officer of public control, Middlesex County Council, and editor of several editions of *Bell's Sale of Food and Drugs*, has become editor of *The British Food Journal*.

RETIREMENT

Major C. E. Banbury has retired from the chairmanship of the Stevenage Petty Sessional Division after forty-two years as a county magistrate. Mr. Geoffrey Powell-Davis will succeed to the chairmanship of the Bench.

RESIGNATION

Dr. Herbert Newsome, part-time Medical Officer of Health to Long Ashton R.D.C. for more than thirty years, is resigning on December 31.

OBITUARY

THE LATE SIR GRANVILLE RAM

The Bar is a profession which has many niches in which the talents of its members may find their full scope. There are those who find the best outlet for their energies in performing the more obvious feats of forensic advocacy and whose life is spent in legal arenas ranging from the rough and tumble of the lower courts to the intellectual gymnastics of the legal stratmosphere in the Court of Appeal and the House of Lords. There are those wizards on paper whose voices are rarely to be heard in the Courts who busy themselves in the written solution of the most complex legal conundra. These two categories probably include the great bulk of the profession but some—a very select few—gravitate to the office of Parliamentary Counsel and taking on the impersonal and silent characteristics of the Civil Service to which they belong become the architects of the new statute law of the land. They are the real back-room men of the Bar. A giant amongst those was the late Sir Granville Ram, K.C.B., Q.C., whose death we record with the greatest of regret. It so happens that we have had to mourn the loss of two outstanding Parliamentary draftsmen within a short time as Sir Maurice Gwyer to whom Sir Granville succeeded as first Parliamentary Counsel to the Treasury died only a few months ago.

Lucius Abel John Granville Ram was born in 1885. He came of a legal family being the son of the late A. J. Ram, K.C., who had an extensive practice at the Local Government Bar, and in 1924 he married a daughter of the late E. A. Mitchell-Innes, C.B.E., K.C.

Educated at Eton and Exeter College, Oxford, he was called to the Bar by the Inner Temple in 1910 and then joined the chambers of that unorthodox but successful leader Mr. A. J. McCardie, K.C., who later became Mr. Justice McCardie. The first World War interrupted Ram's legal career at an awkward stage and after serving with distinction in Gallopoli and France he returned in 1918 to enter the Civil Service becoming Assistant Solicitor to the Ministry of Labour soon after demoblization. In 1924 he reverted to Parliamentary Counsel's office in which he had been temporarily employed after the War and in 1937 he succeeded Sir Maurice Gwyer as First Parliamentary Counsel to the Treasury. Whilst in this office Ram gave legal shape to many highly important pieces of legislation including the Trade Disputes Act, 1926, passed after the General Strike of that year; the Abdication Act, 1936 (with Sir Maurice Gwyer), the Emergency Powers (Defence) Act, 1939; the Education Act, 1947 and the Criminal Justice Act, 1948. Sir Granville Ram's turn of office partly coincided with a particularly heavy legislative output by the Government of 1945 and it is no mean compliment to his resource and powers of organization to say that his Department proved more than equal to the exceptionally exacting demands made upon it before he retired in 1947. He possessed great experience in framing an Act in such a manner as to give best working effect to its intentions and to frustrate political obstruction. After he retired he was made Chairman of the Committee which examines legislation with a view to tidying up the statute book. For this post his exceptional experience in Parliamentary draftsmanship made him specially suitable but it is too early yet to form an estimate of the effects of his efforts.

A LINK WITH VICTORIAN CHANCERY

A living link with the Chancery Bar in the Victorian era has departed from us by the death on Boxing Day of Sir Paul Lawrence (a Lord Justice of Appeal from 1926 to 1934) at the ripe age of ninety-one.

Paul Ogden Lawrence was born on September 8, 1861, and was the son of a successful Chancery practitioner, Mr. P. H. Lawrence. His four sisters all distinguished themselves in the educational world and one of them (Miss Millicent Lawrence) founded in 1885 Roedean School at Brighton.

Sir Paul was educated at Malvern and afterwards abroad. He is numbered with the comparatively few Judges who have achieved the eminence of the Court of Appeal but who have not had an English University education. He was called to the Bar by Lincoln's Inn in

1882 and started practice in the Liverpool chambers of Mr. (later Mr. Justice) Neville. Before the Palatine Court in Liverpool his practice rapidly grew and he was able to take silk in 1896 and so was one of the select survivors of those who had held the rank of Queen's Counsel prior to the present Queen's reign. After he took silk Lawrence, following the then ancient practice, attached himself to the Court of Mr. Justice Kekewich and gradually acquired an ascendancy over all other counsel practising before that erratic Judge.

The system (now long abolished) of attaching Counsel to the Court of a particular Judge which at that time prevailed in the Chancery Division was open to criticism on the ground that individual Counsel might secure an unduly influential position *vis-à-vis* a weak Judge. After Mr. Justice Kekewich's death in 1907 Lawrence transferred himself to Mr. Justice Eve's Court and on going special enjoyed an extensive practice in the House of Lords and Judicial Committee of the Privy Council as well as the Chancery Courts. In the Privy Council he appeared in many cases of imperial and constitutional importance and particularly in Indian cases. He was always an attractive and persuasive advocate and his promotion to the High Court Bench in 1918 by Lord Finlay met with the approval of the whole profession. As a Judge he was capable of handling the most complex cases with assurance and address and he also handled bankruptcy as well as the other business assigned to him. There were, however, some complaints that he had caught some of the worst habits of the system under which he practised as a leader and that he showed his preference for his favourite counsel too plainly. In 1926 he succeeded Lord Justice Warrington in the Court of Appeal and he served there with distinction until his retirement in 1934 at the age of seventy-two. He was then offered a Life Peerage as Lord of Appeal in Ordinary but preferred to go into complete retirement.

Sir Paul Lawrence gave conspicuous service to his profession in other ways. He was Chairman of the General Council of the Bar from 1913 to 1918 and Chairman of the Council of Law Reporting from 1917 to 1919.

Mr. Ashley Tabrum, clerk to Cambridgeshire county council for thirty-two years, died recently at the age of seventy-three. He was articled to a London solicitor and passed his final examinations in 1903. In this year he started work for the Essex county council and was eventually appointed assistant county solicitor. He became clerk to Cambridgeshire county council in 1913 and held this position until 1945.

Mr. E. E. Digby, chairman of the Leighton Buzzard U.D.C., died on December 22, 1952. He had been a member of the council for twenty-seven years.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 2

DEFENDANT KEPT GELIGNITE IN HIS BEDROOM

Two charges were preferred against a thirty-one year old labourer at Builth Wells Magistrates' Court recently, each alleging a contravention of s. 5 of the Explosives Act, 1875. The first charge alleged that the defendant on a certain date kept certain explosives, *viz.*, nineteen sticks of Polar Ammon gelignite, and the second charge referred to the defendant keeping fourteen detonators.

For the prosecution it was stated that as a result of a visit by defendant's wife to the police station a search was made of the house in which defendant was living and the explosives referred to in the charges were found in an attic and a bedroom. Defendant had made a statement in which he said that he obtained the explosives about six months ago from a man he knew as " Little Taff ", and he thought he would make use of them on contract jobs. Although the police had made every effort no trace of " Little Taff " had been found.

Defendant was fined £10 on each summons, ordered to pay costs totalling £4 17*s.*, and an order was made for the forfeiture of all the explosives.

COMMENT

Section 5 of the Act prohibits the keeping of gunpowder except in licensed factories or registered premises. A proviso to the section permits a person to keep for his private use, and not for sale, up to thirty pounds of gunpowder. The section provided that, where gunpowder is kept in an unauthorized place, an order of forfeiture might be made and the occupier of the place in which it was found and also the owner of, or other person guilty of keeping the gunpowder, should each be liable to a penalty not exceeding 2*s.* for every pound of gunpowder so kept.

By s. 3 of the Explosives Act, 1923, it was provided that a penalty of £100 might be imposed in cases where the penalty under s. 5 of the Act of 1875 amounted to less than this sum.

(The writer is indebted to Mr. V. Dilwyn Jones, clerk to the Knighton and Rhayader Justices for information in regard to this case.)

R.L.H.

No. 3

POLLUTING THE SEVERN

A limited company carrying on business as cycle manufacturers and the local urban district council were charged at Newtown, Montgomeryshire, Magistrates' Court recently, with offences under the Salmon and Freshwater Fisheries Act, 1923.

The company was charged with unlawfully causing to flow into water containing fish, *viz.*, the waters of the river Severn, liquid matter to such an extent as to be injurious to fish in the said waters, and the waters of the Shropshire Union Canal, contrary to s. 8 (1) of the Act. A second charge alleged that the company at the same place and between the same dates unlawfully and knowingly permitted the liquid matter referred to in the first charge to flow into waters containing fish, etc. Similar charges were preferred against the local council who owned the sewage works through which the liquid matter was said to have flowed.

For the prosecution, it was stated that on a certain date thousands of dead fish were seen from Brynderwen Bridge floating downstream and dead salmon were seen in adjacent pools. Approximately 17½ miles of the River Severn and ten miles of the Shropshire Union Canal were affected. The pollution was first traced to the council's sewer, and from there to defendant company's factory and it was ascertained that approximately 700 gallons of cyanide solution, a poison almost instantaneous in its action to animal life, had been discharged from the plating department into the council's sewer the previous day. From the sewer the effluent would be carried to the council's sewage disposal works, but owing to a blockage in the sewage carrier, the discharge did not percolate into the ground in the normal way and consequently it entered the river in full strength.

The company pleaded guilty to the first charge and accepted full responsibility and undertook to meet all just and proper claims. For the company it was stated that a most unfortunate combination of circumstances had led to the occurrence and on the day in question no one in the factory knew that the discharge contained cyanide.

For the council, it was urged that the liquid discharged from the factory was not a normal trade effluent which the council could reasonably have been expected to receive, and they could not expect anything abnormal being passed into their sewer.

The defendant company was fined £20 upon the first charge and ordered to pay £75 costs. The second charge against the company was withdrawn, and both charges against the council were dismissed. An application by the council for costs was refused.

COMMENT

It will be recalled that the charge of *causing* injurious liquid or solid matter to flow into waters containing fish was the subject of interpretation by the High Court in *Moses* v. *Midland Railway Company* (1915) 79 J.P. 367. In that case a waggon containing creosote travelled on the Midland Railway Company's line and, owing to a defective tap, creosote leaked from the waggon, escaped into a tributary of a salmon river and killed fish. The magistrates who heard the case were satisfied that there was no negligence whatever on the part of the railway company's servants and dismissed the charge, but it was contended in the Divisional Court that a person who to his knowledge has upon his land poison which he has brought there himself and which to his knowledge must drain into a river containing fish, "causes" it to flow into the river if he does nothing to prevent it from doing so. The Divisional Court did not accept this argument, but Avery, J., who sat with Lord Reading, C.J., and Low, J., said that in his opinion

it was unnecessary to prove *mens rea*. " It is an absolute prohibition " said the learned judge " and the person liable is the person who, in fact, ' causes ' and I do not think it is necessary to show that the person was intentionally causing."

Offences under s. 8 of the Act may, by s. 74, be punished with a fine of £50 in the case of a first offence.

(The writer is indebted to Mr. E. G. S. Tomley, clerk to the Justices, Newtown, for information in regard to this case.)

R.L.H.

No. 4

A SORDID CASE

A twenty-one year old bakery assistant pleaded not guilty at Abingdon Borough Quarter Sessions recently to a charge of abandoning her newly-born child whereby its life was endangered.

For the prosecution, evidence was given that a woman who kept a café and let lodgings at Abingdon, let a room to defendant and an American service man. The following morning about 7.30 *a.m.*, the café proprietor heard the back door being opened, the lavatory being in the back of the premises in the yard, where a dustbin was kept. Shortly afterwards she saw defendant coming from the lavatory, and later heard what she thought were the cries of a baby, seemingly coming from the dustbin. She called the police.

A police constable went to the dustbin and found a baby in it in a sugar carton with tea leaves surrounding its face. He removed the tea leaves at once. A doctor said the child was a seven months baby and weighed 4 *lbs.* A child of that weight must have been extraordinarily tough to have survived.

Defendant said that she was married in 1949 and a child was born in August, 1950. She later separated from her husband, a serving soldier. In January last she formed an association with another man and later found herself to be pregnant. Defendant said she got frightened when in the lavatory and thought the baby was dead. The learned Recorder, in passing sentence of nine months' imprisonment, said that it was the most distressing case he had ever had before him. It was only by the merest chance that the defendant was not faced with a more serious charge.

PENALTIES

Penzance—November, 1952. Throwing a firework in the roadway. Fined £5. Defendant, a hospital student. Another defendant was also fined £5 for a similar offence.

Slough—November, 1952. Building a semi-detached house without a building licence. Fined £400. The defendant, a bricklayer, who became " frustrated and desperate " at building houses for other people while unable to obtain a licence for himself, was stated to have sunk his whole life savings in the house, which he claimed cost him £1,200 to build.

Bow Street—November, 1952. Using insulting behaviour whereby a breach of the peace might have occurred. Fined £10. Defendant, a forty-five year old author, shouted during the two minutes' silence at the Cenotaph on Remembrance Sunday.

Andover Quarter Sessions—November, 1952. Stealing from unattended motor cars (two charges). Three years' corrective training. Defendant, a man of twenty-three, had been committed for sentence by magistrates having previously been twice sentenced by the Salisbury magistrates, the last occasion being in January, 1951, when he was sent to prison for taking and driving away a car.

Oxford—November, 1952. Preparing to sell meat in excess of maximum prices (four charges). Fined a total of £6 and to pay £3 3*s.* costs. Defendant, a butcher, labelled four parcels " lamb " when they were really mutton and put prices on them representing 2*s.* in three cases and 2*s.* 4*d.* in a fourth, when the correct price was 1*s.* 8*d.*

Bow Street—November, 1952. Making an untrue statement to obtain a passport. Three months' imprisonment. Defendant, a thirty-nine year old doctor who had been born in Hungary, although holding a passport in his own name, produced the birth certificate of a man who had been one of his patients, and applied for and obtained another passport in that man's name.

Leeds Assizes—November, 1952. (1) Causing grievous bodily harm to a forty-eight year old shorthand typist, (2) assaulting a police inspector. Four years' imprisonment. Defendant, a thirty year old fisherman, jumped on the typist from behind at night, and dragged her into some nearby bushes. Her screams were heard by a police inspector who arrested defendant after a struggle. Defendant, who was acquitted on a charge of attempted rape, said he thought the woman was his wife who he had not seen since last Boxing Day, when she had said that she wanted nothing more to do with him.

R.L.H.

TRADE EFFLUENTS AND THE POLLUTION OF RIVERS

This subject seems to be in the forefront of local government news at the present time, partly because the Institute of Sewage Purification recently made certain recommendations for amendments in the law, and also because it is in many cases due to the trade effluents that they are legally obliged to take into their sewers, that local authorities are being faced with legal proceedings or threats thereof in respect of the pollution of rivers by their sewage effluent. It is, therefore, here proposed to examine briefly the law relating to the reception of trade effluents into public sewers, the duties of sewerage authorities regarding the disposal of their effluents, and the changes in the law that seem to be necessary.

(A) THE DRAINAGE OF TRADE PREMISES

The law relating to this subject is mostly contained in the Public Health (Drainage of Trade Premises) Act, 1937, which is to be construed as one with the Public Health Act, 1936 (*see* 14 (2)). It is first important to appreciate that, apart from this Act, and unless the effluent is actually harmful (1936 Act, s. 27), the local authority have no control over the reception of a particular effluent into their public sewers. The Act of 1937 applies only to " trade effluent," *i.e.*, " any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, and, in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on at those premises, but does not include domestic sewage " (*see* definition in s. 14 (1)), or liquid produced solely in the course of laundering articles (*see* s. 4 (4))—a most important exception, in view of the widespread use of synthetic detergents at the present day. As a general rule, trade effluent, as so defined, may not be discharged into a public sewer without the consent of the local authority, but this general principle is subject to the following very important exceptions :

(*a*) If the discharge complies with trade effluent byelaws made by the sewerage authority under s. 4 of the Act ;

(*b*) If the effluent is discharged pursuant to an agreement made prior to and subsisting at the time of passing of the 1937 Act. There is no provision whereby any such agreement may subsequently be varied, otherwise than by agreement between the parties ;

(*c*) If trade effluent of the same nature or composition as that of the trade effluent in question was lawfully discharged from those premises into that sewer at some time within the period of one year from March 3, 1937, and provided that the maximum quantity then discharged in a day is not exceeded, the highest rate of discharge is not exceeded, and any payments formerly made are maintained ; those interested in this highly technical prescriptive right, should refer to an interesting article in this Journal at 116 J.P.N. 587. The Institute of Sewage Purification have suggested that this exemption should be completely withdrawn, both on the grounds of its complexity, and because of the hardship it often causes to local sewerage authorities.

Where the opportunity for control does exist under the 1937 Act, as in the case of an intended new discharge of trade effluent

into a public sewer, the statute gives the sewerage authority adequate powers to impose any necessary conditions in their consent, although here also there are a number of technical points that must not be overlooked.

(B) SEWAGE OUTFALLS

Most local sewerage authorities are at present reviewing their existing systems of sewage disposal, owing to recent changes in the law relating to the prevention of river pollution, and also as a consequence of several High Court decisions on the subject. Complaints of pollution of a river by sewage effluent are often due to the discharge of trade effluents, which cannot always be adequately treated at obsolescent sewage treatment plants; but it will be no defence to the local sewerage authority who are discharging polluting matter, to allege that it is trade effluent over which they have no control, as it falls within one or other of the three exceptions from the control of the 1937 Act above mentioned. The seriousness of this matter to the local authority may be appreciated when it is realized that the authority may have to withstand criticism, in the form of legal proceedings, from at least two aspects (outfalls to the sea have their own problems, with which we are not here concerned):

(i) Infringements of the Rivers Pollution Prevention Act, 1951, or of byelaws made thereunder by the local rivers board. Under this Act, no "poisonous, noxious or polluting matter" may be discharged into a stream to which the Act applies (a "stream," for this purpose includes any inland water, pond, etc.), and the rivers board's byelaws may prescribe standards for the purpose of determining whether matter is to be treated as poisonous, noxious or polluting for the purposes of the Act. No protection is given to existing sewage effluents, and it may well be, therefore, that trade effluents which the sewerage authority are compelled to accept into their sewers, and which cannot be adequately "purified" at the existing sewage treatment works, will render the authority liable to proceedings at the instance of the rivers board under the 1951 Act. One precaution at least the sewerage authority can take, and that is, wherever the rivers board have made byelaws prescribing standards, to overhaul their own byelaws made under the 1937 Act, ensuring that the standards with which trade effluents must comply as a condition to being allowed to enter the authority's sewers without express consent under the Act, are no less stringent than the standards applied in the rivers board's byelaws.

(ii) Proceedings in nuisance at common law, at the instance of riparian owners lower down the stream into which the sewage effluent is discharged, or of the owners of other property rights (*e.g.*, fisheries) adversely effected. The common law standard of pollution is very stringent; in a well known legal text-book (*Coulson and Forbes on Waters and Land Drainage*, 6th edn., p. 198), pollution is described as meaning "the addition of something to water which changes its natural qualities so that the riparian proprietor does not get the natural water of the stream transmitted to him," and examples of pollution are given of the addition of hard water to soft water, the raising of the temperature of the water, and the addition of something which, on meeting some other substance already in the water, each in themselves harmless, causes pollution. Effluent which complies with the rivers board's byelaws may therefore nevertheless amount to common law pollution.

Proceedings in common law nuisance have been brought against a number of local sewerage authorities in the last few years—in a number of cases, no doubt, because post-war difficulties have prevented the carrying out of remedial and extension measures at sewage disposal works. Ledbury Rural District Council and Luton Corporation have both figured in the courts in such proceedings in the last few weeks, and the court has in each instance shown itself zealous to protect the rights of private individuals, and as not being ready to accept excuses for pollution, based on the difficulty of obtaining necessary materials or loan sanctions from the appropriate Government Department. It is also an accepted principle of the common law that it is no defence in this type of proceedings to allege that the watercourse into which the polluting sewage matter was discharged, was already polluted from some other source.

In the now famous case of *Pride of Derby and Another* v. *Derby Corporation and Others*, *The Times*, December 15, 1952, both these arguments were used on behalf of the Corporation, and it was further urged on their behalf that a sewerage authority could not be sued in respect of nuisances caused by pollution if they could prove that they had been guilty of non-feasance only. It was said that this particular pollution was due to the amount of sewage effluent having increased beyond the capacity of the treatment works, through causes outside the Corporation's control. The Court of Appeal would not accept this argument, and confirmed the injunction granted by the court below.

(C) SUGGESTED IMPROVEMENTS IN THE LAW

We have endeavoured to show, as briefly as possible, that as a consequence of the working of the Acts of 1937 and 1951 in modern conditions, many a local sewerage authority may well be in a hopeless legal position, remembering that is their statutory duty (which none of them would wish to neglect) under s. 14 of the Public Health Act, 1936, "to provide such public sewers as may be necessary for effectually draining their district," and to make such provision as may be necessary for effectually dealing with the contents of the sewers so provided. We are aware that the matter is receiving consideration in Government Departments, and we would suggest that the present position is such that early legislation on the subject is imperative. This legislation should, we suggest, cover at least the following points:

(1) The deletion of the prescriptive rights to discharge trade effluents into public sewers contained in s. 4 of the 1937 Act, and the provision of a power to revoke pre-1937 Act agreements for the reception of such effluents (*see* the Memorandum of the Institute of Sewage Purification above referred to):

(2) An amendment in the 1951 Act, providing for a reasonable period of grace for existing sewage effluents discharging into streams;

(3) A provision barring any common law proceedings for pollution, in respect of any sewage effluent which complies with the standards prescribed by the rivers board's byelaws made under the 1951 Act.

In addition, we would suggest that the appropriate Government Departments should be prepared to relax, as a matter of course, the restrictions on capital expenditure and the supply of scarce materials, in any case where the Minister is satisfied that a particular sewage effluent does not comply with the byelaws standards, and the sewerage authority are desirous of carrying out remedial works. No doubt those authorities who have been subjected to court injunctions will now be able to obtain the necessary Governmental approvals, but court action against the authority should not become a necessary pre-requisite of obtaining approval.

J.F.G.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Effect of adoption order—Whether adoption order made before commencement of Adoption of Children Act,* 1949, *has effect of terminating existing affiliation order.*

A, a single woman, has an affiliation order against B for *x* shillings per week. C, the parents of A, who have in fact had the physical custody of the child concerned with the consent of A, adopted the child under an adoption order made on September 7, 1949, and the court sanctioned the affiliation order payments to the adopters under s. 9 of the Adoption of Children Act, 1926. The adopters made an application on January 26, 1950, for the payments to be transferred to them under s. 3 of the Affiliation Orders Act, 1914, which was granted. Section 12 of the Adoption Act, 1950, which came into force on October 1, 1950, states any affiliation order, etc., in force with respect to the infant shall cease to have effect except for arrears accrued up to that date. Section 38 of the Interpretation Act, 1889, which is referred to in s. 46 of the Adoption Act, 1950, states unless the contrary intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred and can be enforced, etc., as if repealing Act had not been passed.

Your opinion is asked as to whether such payments are still enforceable despite the provisions of s. 12 of the Adoption Act, 1950.

S. LEX.

Answer.

Section 12 (1) of the Adoption Act, 1950, is a re-enactment in slightly different words of s. 11 (2) of the Adoption of Children Act, 1949, which specifically referred to adoption orders made after the commencement of that Act, *i.e.*, after January 1, 1950. The Act of 1950 is a consolidating Act. We have no doubt in view of this, and of the general principles involved, that where the adoption order was made before the commencement of the 1949 Act, as in this instance, the affiliation order is still enforceable.

2.—Building Materials and Housing Act, 1945—*Restricted price—Purchase at higher price—Clear certificate issued subsequently.*

We have read with great interest the article, letters, and P.P.'s at 115 J.P.N. 681, 751, and 825 and 116 J.P.N. 13 and 108, and should be obliged for your views on the following position which you will see differs in various respects from the cases referred to. On March 4, 1947 the local authority approved a licence to a builder for two houses the restricted selling price being £1,200 each and the restricted selling price was on that day registered as a local land charge. The licence was dated March 11 and issued on that date and on November 18, 1947, (the houses having been built) one house was conveyed by the builder B to a purchaser, P, for £1,300. On August 3, 1948, mortgagees, M, applied for and obtained an official certificate of search in the local land charges registry showing no subsisting entries. This search was dated August 7, and was sent to M under cover of a letter dated August 6, giving replies to certain additional inquiries by M which did actually point out this restricted selling price. P now wishes to sell his property and it is suggested that he is not affected by the restriction in view of the all clear search in his possession. This we consider is not correct as the search was issued to M and not to P. If P, therefore, can only sell for £1,200 now, what are his rights with regard to the other £100, if any, (*a*) against the local land registrar (we think none), (*b*) against B (we take it full right to claim the £100 from him), and (*c*) against the solicitor acting for him on his purchase who, when asked for an explanation of the purchase price being more than the restricted price and when asked for the search, which they presumably made at the time of the purchase which was not with the papers, replied that they regretted that they could not find their draft papers and that P knew all about it.

P. ORIEL.

Answer.

The suggestion that the registrar's certificate dated August 7, 1948, may enable P to sell for more than £1,200 is presumably based on s. 17 (3) of the Land Charges Act, 1925, but P who bought in 1947 can plainly not benefit under this subsection. Equally, its issue months after his purchase cannot give P any remedy against the registrar. (Whether M could benefit by it, in face of the covering letter contradicting it, is an interesting question which is not before us.) If B had been prosecuted to conviction within six months of the sale to P, the justices could if they thought fit (*e.g.*, if satisfied that P had acted innocently) have directed a payment to P under s. 7 (7) (*a*) of the Act of 1945, but even so P would have had no absolute right to that payment. Whether P could in any circumstances recover damages from B (as distinct from payment under this section) is a question that may some day be raised but, at the least, P would have to prove that he had relied on B to inform him about the land charge, and that B had deceived him. Of this there is no evidence: on the contrary, P's own solicitor says that P knew all about it in fact, as well as being affected in law by the charge. Similarly as between P and the solicitor: the latter's methods may be slapdash, but P would, at the least, have to prove both that the solicitor had failed in his duty to search, and that that failure was the cause of P's paying too much. On the information before us, P (who not impossibly bought for £1,300 in 1947, expecting the restriction to lapse in 1949, as the Act of 1945 then stood) cannot now sell for more than £1,200, and has no remedy against anybody.

3.—Children and Young Persons—*Children in care under Children Act,* 1948, *s.* 1—*Mother has obtained order giving her custody and arranges for children to remain in care—Father demands children from local authority.*

In regard to P.P. 1 at 116 J.P.N. 529, dealing with this question, I was surprised to find no reference, either in your correspondent's query or the reply, to s. 6 (2) of the Children Act, 1948, under which, for the purpose of the preceding sections of the Act, the person having legal custody is substituted for parent, parents, or guardian.

Would you not agree that, where a custody order is in force in relation to a child in the local authority's care, this subsection, read with s. 1 (3), provides statutory authority for refusal to discharge the child to anyone but the person in whose favour the order was made?

S.F.S.M.

Answer.

We agree that this may be an additional argument in favour of our answer, though it might be contended that s. 6 (2) refers to an order giving custody to some person who is not a parent or guardian. On the whole we think our learned correspondent's view is correct.

4.—Husband and Wife—*Wife obtains order for restitution of conjugal rights—Disobeyed husband—Jurisdiction of justices to entertain application for order for maintenance.*

We act for wife (W) who took proceedings before local magistrates for a maintenance order on the grounds of neglect to maintain. The order was refused because she was held to have deserted her husband (H) and she appealed. Pending the hearing of the appeal W issued a petition for restitution of conjugal rights. The appeal was adjourned *sine die* pending the hearing of the petition which H failed to defend and a restitution order was made. H has failed to comply therewith and has also failed to answer two subsequent letters pleading with him to take his wife back. No further action has been taken on the appeal.

In the restitution proceedings W made application for alimony *pendente lite* but H swore he was unemployed and no further step in this direction was taken. H is now known to be working and W desires to obtain maintenance. In the circumstances an order from the magistrates' court would be preferred owing to the difficulty of enforcing the maintenance order made in the High Court. W has no means. It is submitted that H's refusal to take his wife back pursuant to the letters that have been sent to him since the restitution order was made constitute new grounds for desertion and that the local justices could therefore entertain a fresh application on this new desertion. In the alternative, it is thought likely that H is living with another woman and proof of this could doubtless be obtained. The magistrates' clerk here has been requested to issue a fresh summons for maintenance on the grounds of desertion or, in the alternative, on the grounds of adultery by H. He is of the opinion that the magistrates here cannot listen to any further matters arising between the parties until W has been to the High Court and obtained a certificate that they are no longer seized of the matter, and further that the appeal from their previous decision which was adjourned *sine die* has not been disposed of. He adds that a person cannot be attacked for not obeying an order for restitution but one of the results of a refusal to obey is that an order can be made for periodic payments and these must be ordered by the High Court. We consider there has been fresh desertion apart from adultery committed since the restitution order was made.

Can you please advise whether W can now apply to the local magistrates for maintenance on the grounds of desertion and/or neglect to maintain since the order for restitution or for a separation and maintenance on the grounds of adultery (assuming this can be proved) without taking any further steps in the High Court either with regard to the appeal or the petition for restitution. Would you please quote authorities in support of your answer.

JEY.

Answer.

We think it is always unwise for justices to entertain an application for a new order (as opposed to variation of an existing one) after the

parties have taken proceedings in the High Court, unless the High Court indicates that there is no objection to their assuming jurisdiction. We think that applies in this case, with the possible exception that it may be argued that the question of adultery is an entirely new issue which has arisen since the High Court proceedings (we understand this to be the suggestion) and that an application on that ground might properly be heard by the justices. As, however, on the hearing issues might arise that had already been considered by the High Court we think it wiser, even in that case, for the justices to ascertain first what are the views of that court before acting in the matter.

We can find no authority in point. *Ross* v. *Ross* [1950] 1 All E.R. 654 decided that a wife could not apply for a maintenance order in two courts, and must elect where she will proceed.

5.—Justices' Clerks—*Appointment as clerks to sub-committees under Diseases of Animals Acts.*

The county council of X, some thirty-seven years ago, by resolutions and orders passed under the provisions of the Diseases of Animals Acts, 1894 to 1914, provided that sub-committees shall be appointed and formed for each of the petty sessional divisions of the county for the purpose of carrying into effect the duties of the local authority under the Acts.

The resolutions and orders contained, *inter alia*, the following :

" The clerks to the justices of the several petty sessional divisions shall be, and they are hereby, appointed clerks of the several sub-committees."

Provision was also made by the resolutions and orders for the payment of certain fees to the various clerks to the justices for their work in connexion with the duties thus imposed upon them.

The question has now arisen as to the effect which the Justices of the Peace Act, 1949, will have upon the above-mentioned situation when the provisions of that Act become fully implemented in April next, and in particular whether the resolutions and orders of the county council imposing certain duties under the Act (now the Diseases of Animals Act, 1950) upon clerks to justices are rendered *ultra vires*. It will be observed that the wording of the resolution and order casts the duties referred to upon the clerks to the justices as such (*i.e.*, by virtue of their office), and not specifically upon the individuals concerned by name. Under the Act of 1949 the justices' clerks will pass into the employ of the magistrates' courts committee for the county, and they will receive a personal salary in respect of their duties as clerks to justices. The fees which in the past have been paid to the clerks in respect of their work for the Diseases of Animals sub-committees have been paid by the county council. It is not clear whether such fees can continue to be paid to the clerks to the justices by the county council when the Act of 1949 is fully operative, and if the existing arrangement is continued some complications may arise, particularly in the working of the superannuation provisions of the Act of 1949.

No information is available as to whether similar arrangements, whereby clerks to justices (as such) are appointed clerks to the various Diseases of Animals sub-committees, exist in any other county in the country. A further difficulty lies in the fact that in any prosecution for a breach of a condition of a licence granted by a sub-committee the clerk may find himself in a difficulty by reason of the fact that he is clerk to the justices and to the sub-committee issuing the licence.

Your opinion is sought on the position generally, and in particular whether it is undesirable that clerks to the justices should continue to be appointed clerks to these sub-committees having regard to their position arising out of the provisions of the Act of 1949. SIB.

Answer.

There are still many part-time clerks to justices, and s. 19 of the Act of 1949 recognizes that a clerk may be engaged in other work in addition to his duties as clerk. However, we entirely agree with our learned correspondent that there are difficulties attaching to the position of a clerk to justices who is also clerk to a sub-committee dealing with the grant of licences and we think it would be well to avoid making such appointments.

In any case, it seems rather strange for the appointments to be made of all the clerks to justices *ex officio* and without naming each so appointed. Presumably, the consent of each would have to be obtained and some clerks would not wish to act. If any clerk to justices should now be invited to accept the appointment he would no doubt think it well to consult the magistrates courts committee, even if he personally saw no objection to acceptance. As any remuneration for such services would not be payable in respect of his duties as clerk to the justices we think he would be entitled to receive it.

6.—Landlord and Tenant—*Rent Restriction Acts—Local authority's houses.*

My council own certain leasehold dwelling-houses (rateable value £11 each) which were erected in 1926 by the original lessees, a mortgage being entered into between the lessee and the council in each case, to assist in the construction, the mortgages being granted under the provisions of s. 92 of the Housing Act, 1925. Subsequently the mortgagors were in difficulties in so far as mortgage repayments were concerned, and in 1931 the dwelling-houses were assigned to the council for the residue of the terms under their respective leases, discharged from all rights or equities of repayment under the mortgages. A direction was obtained under s. 128 (*d*) of the Housing Act, 1936, for the inclusion in the housing revenue account of the income and expenditure relating to these houses. Section 189 (2) of the Housing Act, 1936, appears to make these dwelling-houses " houses provided by a local authority under this Part of this Act " (s. 83 (1) of the Housing Act, 1936), and the House of Lords' judgment in *L.C.C.* v. *Shelley* settled that s. 156 of the 1936 Act overrode all provisions of the Rent Acts relating to possession of council houses, so that it is thought no difficulty would be experienced in an action for recovery of possession. The position as to increases in rent in respect of some of these dwelling-houses is, however, not so clear. The control under the Act of 1939 does not apply to council houses for any purpose (s. 3 (2) (*c*) of that Act), but there is no similar provision exempting council houses from the restrictions on the permissible rents imposed by the " old control." If this is correct, certain of these dwelling-houses appear to have been within the previous Rent Acts on September 2, 1939, and would, therefore, still be subject to rent restriction. They have not been decontrolled by the council's obtaining physical control of the premises or otherwise, and your opinion would be appreciated as to whether or not the net rents can be increased. P.B.B.

Answer.

The house is still subject to the Rent Restrictions Acts although possession may be obtained under s. 156 of the Housing Act, 1936, notwithstanding those Acts. Section 3 (2) (*c*) of the Act of 1939 merely saved uncontrolled houses within the housing revenue account from the new control. If the house were deemed to be provided under Part V of the Act of 1936, then s. 83 of that Act would apply but, even then, the power to make charges under that section is subject to the Rent Restrictions Acts if the house is not excepted from those Acts, and the rent can only be increased within the terms of those Acts ; *see Shelley* v. *London County Council* [1949] A.C. 56 at p. 72 ; [1948] 2 All E.R. 898 ; 113 J.P. 1.

7.—Lotteries—*Small lottery—Advertisements and display of prizes.*

Section 21 of the Betting and Lotteries Act, 1934, makes all lotteries (with certain exceptions) unlawful, and s. 22 deals with various offences in relation thereto, amongst which is indicated the offence relating to advertising lotteries and the use of premises in relation to lotteries. This seems to me to deal particularly with " unlawful lotteries." Section 23 lays down the conditions under which " small lotteries " may be promoted, and I shall be glad of your opinion as to whether or not it is an offence to advertise a " small lottery," and further, whether in your opinion premises may be used to display prizes of a " small lottery," this advertising and display, of course, being prior to the day of the actual " small lottery." Tickets, of course, for the " small lottery " being only obtainable in accordance with the conditions laid down in s. 23. SORT.

Answer.

Provided a lottery falls within the provisions of s. 23, and all the conditions therein laid down are observed, the lottery is not unlawful, s. 22 (2) applies, and there appears to be no objection to what is proposed in the question.

8.—Magistrates—*Jurisdiction and powers—Substitution of charge of common assault for one of indecent assault on two young boys—Substituted charge preferred at direction of court—No formal complaint by or on behalf of the boys—Validity of conviction.*

X was summoned before magistrates in respect of two alleged offences of indecent assault on two male persons under the age of sixteen years contrary to s. 62 of the Offences Against the Person Act, 1861. He elected to be dealt with summarily and pleaded not guilty to each charge. After hearing all the evidence for the prosecution, the defending solicitor submitted that there was no case to answer in that there was no evidence of indecency. The magistrates held that there was no case to answer on the charges of indecent assault but continued " we direct that charges of common assault be preferred." These charges were put to the accused by the clerk and accused pleaded Not Guilty. Defendant's solicitor intimated he did not wish the witnesses for the prosecution re-called and accused then gave evidence on his own behalf. The magistrates found the cases of common assault proved and fined the defendant £2 in each case. The original information in respect of the charges of indecent assault were laid by the police who also instructed a solicitor to prosecute. Although defendant's solicitor raised no objection at the time it is now felt that the magistrates were incorrect in directing charges of common assault to be preferred, because such

charges can only be brought before the court either by the complainants themselves or someone on their behalf (not the police). We have been referred to the case of *Conn and Others* v. *Turnbull* (1925) 89 J.P.N. 300, but we feel that this case is not on all fours because the complainant was there represented in court by counsel. In the present case the complainants who were both boys of the age of thirteen years were only present in court as witnesses called by the police in respect of charges of indecent assault.

Can we please be informed of your views on this question as we understand that the procedure adopted in this case is fairly common. Would it have made any difference if defendant's solicitor had objected at the time to the amended charges and advised defendant not to plead to them? Could the parents of the boys in such an event have subsequently brought proceedings for common assault without the risk of a successful plea of *autrefois acquit*? SETI.

Answer.

The decision in *Conn and Others* v. *Turnbull, supra*, appears to be based on the fact that the court held there was an information or complaint by or on behalf of Major Turnbull, who was present in court with his counsel and solicitor and proceeded with the charge as reduced by the justices.

In *Blake* v. *Beach* (1876) 40 J.P. 678 the importance of an information, as the foundation of the proceedings, was stressed, but the court speaks of the waiver by the defendant of an information and summons.

In the case we are asked about the accused and his solicitor proceeded, without objection, to meet the substituted charge. On the whole, therefore, we feel that the defendant would be held to have waived his right to an information and summons.

The major difficulty is the suggestion that the justices acted without jurisdiction, because there was no complaint by or on behalf of the two boys. They were present in court, and had given their evidence which must of itself have been, in effect, a complaint that they had been assaulted. We feel there are no merits in this point, and that it is unlikely that the conviction would be upset on this ground.

Had the defendant's solicitor objected at the time we think the justices would have been wrong to have proceeded then and there, but subsequent proceedings on the complaint of the parents, on behalf of the boys, could have been brought and there could not have been a successful plea of *autrefois acquit*.

9.—Probation—*Supervising court—Juvenile becoming seventeen during probation period.*

By s. 5 (1) of the Criminal Justice Act, 1948, " the provisions of the first schedule to this Act shall have effect in relation to the discharge and amendment of probation orders." By para. 2 of the first schedule any amendments to a probation order are made by the supervising court. By s. 80 (1) " supervising court " means in relation to a probation order a court of summary jurisdiction acting for the petty sessional division or place for the time being named in the order; and where the probationer was a child or young person within the meaning of the Children and Young Persons Act, 1933, when the probation order was made, means a juvenile court for that division or place.

A young person was charged jointly with an adult before an adult court of another division and was placed on probation. This court was named as the supervising court as the young person resided in this town. She has now become an adult. It appears, however, that to amend the order she must, for the first time in her life, be brought before a juvenile court. This seems absurd, and to take an extreme case if a young person aged 16¼ were dealt with by an adult court in the circumstances given above and placed on probation for three years, it might be necessary to bring him or her before a juvenile court to vary the order when he or she was over nineteen years of age. Am I right in thinking that the probationer must be brought before a juvenile court? SING.

Answer.

In view of the definite words of s. 80 it seems unavoidable that the juvenile court should remain the supervising court. This court has the same power as any other magistrates' court when dealing with an adult who is lawfully before it.

10.—Public Health Act, 1936—*Public Health (London) Act*, 1936—*Wood Worm.*

A property has been inspected by the sanitary inspector after a complaint made by the tenant, and it has been found that the floor boards and timbers of some of the rooms are in a worm-eaten condition. The inspector does not consider that the presence of the worm in the wood renders the floors or timbers at all dangerous to life, limb, or health, but he confirms the tenant's complaint that her furniture is becoming badly affected by the spread of the furniture beetle. In view of the decision in the case of *Betts* v. *Penge Urban District Council* [1942] 2 All E.R. 61; 106 J.P. 203, is it considered that the damage to the furniture of the tenant due to the spread of the furniture beetle from the timbers of the house amounts to an interference with the personal comfort of the occupiers, or should such interference be limited to matters relating to the persons of the tenants and not to their possessions? The case would fall to be considered under the Public Health (London) Act, 1936. PEST.

Answer.

In our opinion, the spread of the bettle to the furniture does not render the premises in such a state as to be a nuisance or injurious or danger to health within s. 82 (1) (*a*) of the Public Health (London) Act, 1936, or a nuisance either interfering with personal comfort or injurious to health within *Betts* v. *Penge District Council, supra.* Insects, however, which do not limit their activities to wood might come within the above provisions, and we express no opinions upon s. 9 of the Housing Act, 1936, about which we are not asked.

11.—Public Health Act, 1936, s. 15—*Branch sewers serving more than one property—Whether public sewers.*

In order to provide sewerage facilities to five properties in this district the council propose laying a sewer through private land as shown coloured red on the enclosed sketch. The houses in question are in separate ownership and, subject possibly to 2 and 3, in separate curtilages. The sketch shows the access arrangements to houses 2 and 3. The owner of the land through which a portion of the sewer between the points A and B would be laid declines to grant an easement and the council propose laying a sewer after the service of notices under s. 15 of the Public Health Act, 1936. It is considered that the lengths of pipe with manholes coloured black on the plan are public sewers, as one length will serve houses 4 and 5 and the other length will serve houses 2 and 3. As the owner may take advantage of any legal technicality, the council desire to be assured that these branches coloured black are in fact public sewers. Your opinion is, therefore, desired whether such branch pipes coloured black are public sewers which can lawfully be laid through private land after the service of notices under the Public Health Act, 1936. PADE.

Answer.

Yes, in our opinion.

12.—Public Health Act, 1936, s. 47 (4)—*Closet connected to cesspool.*

An owner of property which at present is provided with earth closets is desirous of replacing them by water closets and has applied to the council for a grant of half the expenses incurred in effecting the replacement.

As there is no public sewer available, it will be necessary to construct a cesspool and you are asked to advise:

(i) Whether the council is entitled to make a contribution under s. 47 (4) of the Public Health Act, 1936, when there is no public sewer available. There is no express mention of a public sewer in s. 47 (4) as there is in s. 47 (1).

(ii) If the answer to the first question is in the affirmative, can the cost of the provision of the outfall to the cesspool and the provision of the cesspool be included as " an expense reasonably incurred in the execution of the works." PAWN.

Answer.

1. Yes, in our opinion. The proposal is to provide a water closet, and a water closet is defined in s. 90 of the Public Health Act, 1936, as a closet which has a separate fixed receptacle connected to a drainage system. The subsection is intended to put the owner who voluntarily connects into as good a position as if he had defaulted. The compulsory powers under subs. (1) are restricted to cases where there is an available sewer. There is no such restriction in subs. (4).

2. Yes, if the authority think fit and they are satisfied that the expense is reasonable

13.—Public Utilities Street Works Act, 1950—*Street Lighting—Notices required.*

(*a*) Is the local authority bound to give notice to statutory undertakers under ss. 3, 6, or 26 of the Public Utilities Street Works Act, 1950, of the intended provision of street lighting by the erection of lamp standards? " Road purposes " is defined in s. 39 (1).

(*b*) If " road purposes " in s. 39 (1) is construed as not including street lighting, can " undertakers' works " referred to in s. 1 (2) of the Act be said to include street lighting as being apparatus? PIE.

Answer.

(*a*) The local authority installing lighting of the streets under their statutory powers are in our opinion statutory undertakers within s. 1 (2) of the Act of 1950. A plan and section should, therefore, be furnished to the h ghway authority under s. 3 if the local authority are not themselves the highway authority and, if applicable, to transport authorities under s. 10 and to the sewer authority under s. 12. Notice should also be given to other statutory undertakers under s. 26.

(*b*) Yes, in our opinion.

14.—Road Traffic Acts—*Traffic sign—Policeman giving signals to traffic at crossing where there is a traffic sign—Duty of drivers.*

There is a halt sign at a cross roads. At times of heavy traffic a police constable is stationed on point duty to control the traffic and thus relieve congestion. Must a driver signalled to proceed by the constable still halt at the halt sign? Which takes precedence, the sign or the constable? If drivers halt at the sign it delays traffic and largely defeats the object of the constable. In the circumstances police proceedings would be unlikely but the question might still arise in a civil court if there is an accident. Is their any ruling on the point?

JIB.

Answer.

We know of no authority on the point, but we think that traffic must obey the policeman's signal and that this, for the time being, overrides the indication given by the traffic sign. The position is rather like that at a pedestrian crossing where at times a policeman is on duty, and at other times he is not. When he is there he controls the movement of traffic, and at other times the crossing is an uncontrolled one.

15.—Summary Jurisdiction Acts—*Prosecution—Appearance and representation of informant.*

It is the practice of this authority for informations in prosecutions under the Public Health Act, 1936; the Food and Drugs Act, 1938, and similar legislation, to be laid by the council's chief sanitary inspector as head of the department concerned. This is done whether the necessary evidence is collected by that officer personally or by his district inspectors. The resolution of the council authorizing proceedings is framed as follows: "That the chief sanitary inspector be authorized to institute such summary proceedings as the town clerk may determine" with regard to the offence disclosed in the chief sanitary inspector's report. From the frequency with which such officers figure in appeal cases the practice whereby the chief sanitary inspector is authorized to institute proceedings appears to be fairly general. It is important to emphasize that the case itself is always conducted in court by a solicitor from the town clerk's department. It has, however, been suggested:

1. That it is legally necessary for the chief sanitary inspector to be present in court as the informant. (This is probably desirable but is it necessary if the chief sanitary inspector is represented by a qualified person?) and

2. That the information should more properly be laid either (*a*) by the person directly involved in the case, who will give evidence in court, or alternatively (*b*) by the town clerk.

In connexion with the first point, I have always understood that s. 13 of the Summary Jurisdiction Act, 1848, allows an informant to appear personally or by counsel or attorney. Admittedly, it would not be proper for a superintendent of police who lays an information (and is not in court) to be represented by another unqualified associate, but this is different from saying that a superintendent of police cannot appear and be represented by a solicitor (he not being personally present). This often happens in fact. On the second point, I cannot see any legal objection to what is a convenient administrative arrangement. The chief sanitary inspector, as the head of his department, is the person responsible for collecting all the facts and he is duly authorized by specific resolution in each case to institute proceedings. Even this requirement does not appear to be essential when the statute under which the prosecution is taken does not limit the right of any person to take proceedings: *Snodgrass* v. *Topping* (1952) 116 J.P.N. 312, but where the right to prosecute is limited to a party aggrieved or a council responsible for enforcement (as by s. 298 of the Public Health Act 1936), the choice of agent appears to be a matter of convenience. If it were desired to lay the information on oath, the town clerk would be less able to substantiate from personal knowledge the matter of the information. In some cases this could probably best be done by the district inspector who is directly involved, but it appears reasonable that the information should be laid by the head of the department under whose direction he works, who is responsible for the day to day administration of the Act. Again, the suggestions raised in (1) and (2) above seem to cancel each other. In (1) above it is argued that the informant should be in court, but the town clerk is less able to be present in court than the chief sanitary inspector, and in (2) above the argument is that the information should be laid by the person collecting the evidence. I should, therefore, be glad to know whether you agree generally with the foregoing, and especially:

1. In the circumstances and type of case mentioned above, whether you see any objection to the chief sanitary inspector's instituting the proceedings;

2. Whether you see any advantage in the town clerk's instituting proceedings rather than the chief sanitary inspector;

3. Whether it is a legal requisite and, if so, what is the authority whereby an informant must be personally present in court at the hearing;

4. If your answer to (3) is in the negative whether you consider it proper for the informant not to be personally present in court, providing that he is represented by counsel or solicitor.

P.N.T.

Answer.

1. No.
2. No.
3. He must appear personally or by counsel or solicitor; *see* Summary Jurisdiction Act, 1848, s. 13.
4. Yes.

16.—Town and Country Planning Act, 1947—*Plans approved under previous law—Whether land ripe for development.*

In 1936 a builder submitted an application for byelaw approval and for interim development consent in respect of an area of land for the erection of a number of houses. At the request of the county highway authority building operations were postponed owing to the construction of a proposed by-pass. The proceedings were very protracted and in fact it was necessary for some alteration to be made in the development proposals, in order to comply with the site of the by-pass. As a result of these negotiations building operations had not begun at the outbreak of the war. An opinion is desired as to whether the developer is entitled to a certificate that the land was "ripe" for development before the appointed day pursuant to s. 80 of the Town and Country Planing Act, 1947, on the ground that some form of building contract was deemed to be in operation within the period of ten years before January 7, 1947, and that byelaw submission was also operative having regard to the fact that under the provisions of s. 66 of the Public Health Act, 1936, any consent issued was operative for a period of three years, therefore, in the case under consideration byelaw consent was available within the period prescribed by s. 80 of the Town and Country Planning Act, 1947.

PEW.

Answer.

No, in our opinion, because planning permission was not deemed to be granted under s. 77 of the Act of 1947 as required by s. 81 of that Act. Permissions deemed to be granted under s. 77 are permissions granted after July 21, 1943, and before July 1, 1948. The land would, however, appear to qualify as near ripe land; *see* the Central Land Board's Explanatory Pamphlet on Builder's Near Ripe Land.

'They need MORE than pity'

No amount of welfare legislation can ever completely solve the problem of children hurt by ill-treatment or neglect. There must be an independent, experienced organisation whose trained workers can protect those who cannot defend themselves—and who give the patient advice and assistance so often needed to rebuild the family life. The National Society for the Prevention of Cruelty to Children depends on voluntary contributions to continue this work. No surer way could be found of helping the helpless, and bringing happiness to those who need it most.

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OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

GLOUCESTERSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from persons qualified in accordance with the Justices of the Peace Act, 1949, for the permanent whole-time appointment of Clerk to the Justices for a combined area consisting of the Cheltenham, Tewkesbury Borough and Tewkesbury County Petty Sessional Divisions. The two Tewkesbury Divisions are proposed to be combined during 1953. Office accommodation, with a central office in Cheltenham, and staff will be provided by the Committee. The combined area has a population of approximately 90,000. The personal salary will be £1,500 subject to review when the National scales for Justices' Clerks, now being negotiated, are received. The appointment will be superannuable and subject to a medical examination.

The Clerk will be required to take up the appointment on May 1, 1953.

Applications, giving full particulars of age, qualifications and experience, together with the names of two referees, should be forwarded to reach me not later than January 31, 1953.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

BOROUGH OF HORNSEY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors experienced in municipal law and practice for the above appointment.

The salary and conditions of service will be in accordance with the recommendations of the Joint Negotiating Committee (Scale E—Salary £1,250—£1,450) and the appointment is subject to the provisions of the Local Government Superannuation Act.

Applications, which must be made on a form to be obtained from me, must be returned not later than January 23, 1953.

Canvassing will disqualify.

T. FYANS,
Acting Town Clerk.

Town Hall,
Crouch End, N.8.

HAMPSHIRE MAGISTRATES' COURTS COMMITTEE

Alton and Petersfield Divisions

Appointment of Justices' Clerk

APPLICATIONS are invited from duly qualified persons for the whole-time appointment of Clerk to the Justices for the Alton and Petersfield Divisions. The population of the Divisions is 61,493 and the salary will be £1,100 subject to review when the recommendations of the National Negotiating Committee are issued. The appointment will be superannuable and the person appointed will be required to take up his duties on May 1, 1953.

Applications, giving full particulars of qualifications and experience, together with the names and addresses of two referees, should be received not later than January 26, 1953.

G. A. WHEATLEY,
Clerk of the Committee.

The Castle,
Winchester.

GLOUCESTERSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from persons qualified in accordance with the Justices of the Peace Act, 1949, for the part-time appointment of Clerk to the Justices of the Berkeley, Dursley and Whitminster Petty Sessional Divisions.

The personal salary for the three Divisions will amount to £525 per annum, which will be reviewed when the National scales for Justices' Clerks are received. In addition an allowance of £315 will be paid for office accommodation at Berkeley and Dursley to be provided by the person appointed, staff and overhead expenses.

The Clerk will be required to take up the appointment on May 1, 1953.

The appointment is superannuable and subject to a medical examination.

Applications, giving particulars of age, qualifications and experience, and the names of two referees, should be forwarded to reach me not later than January 31, 1953.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

COUNTY OF SURREY

Petty Sessional Division of Wallington

(*Re-advertised*)

APPLICATIONS are invited for the post of Second Assistant Clerk to take up duties on February 1, 1953. Salary Grade III National Scale, plus London Weighting.

Applications, with two copies of recent testimonials, must reach the undersigned by January 17, 1953.

A. J. CHISLETT,
Clerk to the Justices.

URBAN DISTRICT OF CHERTSEY

Clerk's Department

Appointment of Legal and General Clerk

APPLICATIONS are invited from persons experienced in general legal and committee (especially planning) work of a Town Clerk's or Clerk's Department for the above established appointment.

The salary attaching to the post is Grades II and III combined of the A.P.T. Division of the National scales, and the commencing salary will be fixed within the before-mentioned Grades according to the experience and qualifications of the person appointed. The Council have agreed that in the case of a suitably qualified applicant, the Clerk and Solicitor, if he sees fit, may grant the candidate articles of clerkship, without premium.

Applications must be made on the official form, which, together with further particulars and conditions of appointment, can be obtained from the undersigned, to whom applications should be delivered in envelopes endorsed "Legal and General Clerk," not later than Saturday, January 24, 1953.

A. REX HERBERT,
Clerk and Solicitor.

Council Offices,
Chertsey,
Surrey.

GLOUCESTERSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from persons qualified in accordance with the Justices of the Peace Act, 1949, for the part-time appointment of Clerk to the Justices for the Thornbury Petty Sessional Division.

The personal salary will be £300 per annum which will be reviewed when the National scales for Justices' Clerks are received. In additional an allowance of £180 will be paid for office accommodation to be provided by the person appointed, staff and overhead expenses.

The Clerk will be required to take up his appointment on May 1, 1953.

The appointment is superannuable and subject to a medical examination.

Applications, giving particulars of age, qualifications and experience, and the names of two referees, should be forwarded to reach me not later than January 31, 1953.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

Re-issued Advertisement

COUNTY BOROUGH OF MIDDLESBROUGH

ASSISTANT SOLICITOR required for Town Clerk's Department. Grade A.P.T. Va-VII (£625—£785). N.J.C. Conditions, Superannuation Scheme.

Application forms from the Town Clerk, to be returned by January 24, 1953.

WEST RIDING AREA PROBATION COMMITTEE

Appointment of Male Probation Officer
Appointment of Female Probation Officer

APPLICATIONS are invited for the above whole-time appointments.

The officers would be centred at Dewsbury and would be assigned to the Dewsbury County Borough and the Petty Sessional Divisions of Ossett and Dewsbury. The male probation officer would, in addition, be assigned to the Petty Sessional Division of Morley East (Cleckheaton).

Applicants must be not less than twenty-three nor more than forty years of age except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949 to 1952, and to the Local Government Superannuation Act, 1947, as amended by the West Riding County Council (General Powers) Act, 1948.

The successful candidates will be required to pass a medical examination.

Application forms may be obtained from the Principal Probation Officer, West Riding Court House, Wakefield.

Applications, together with two recent testimonials, should be enclosed in a sealed envelope marked "Appointment of Probation Officer," and must reach the undersigned not later than January 31, 1953.

BERNARD KENYON,
Clerk to the Area Probation Committee.

Office of the Clerk of the Peace,
County Hall,
Wakefield.

COUNTY BOROUGH OF WEST HAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for this appointment, Salary Grade A.P.T. VII/VIII (£710 to £835) plus London Weighting (£20—£30 according to age). Commencing salary according to experience. Local Government experience not essential but an advantage, particularly if in Town Planning work.

Terms and conditions of appointment, with forms of application, may be obtained on request, and applications, accompanied by copies of two recent testimonials, must be received by first post January 26, 1953.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

INQUIRIES

MISSING PERSONS TRACED

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COUNSEL AND SOLICITORS' REFERENCES

GEORGE O'BRIEN

44 Egerton Gardens, Hendon, London, N.W.4. *Telephone :* HENDON 3908
Established 1935

COUNTY BOROUGH OF LINCOLN

MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk
Justice of the Peace Act, 1949

APPLICATIONS are invited from Barristers or Solicitors qualified in accordance with the above Act for the whole-time appointment of Clerk to the Justices for this County Borough. Lincoln has a population of approximately 70,000.

The Clerk appointed will be required to take up his duties on or about April 1, 1953. The commencing personal salary will be £1,400, subject to adjustment upwards in accordance with the scale to be determined by the National Joint Negotiating Committee as approved by the Home Secretary. The appointment will be permanent and superannuable in accordance with the above Act.

Applications, giving qualifications, age, experience, together with two recent testimonials, and stating the date when the applicant would be able to take up duty, should be received by me not later than January 31, 1953.

J. E. M. COLEMAN,
Clerk of the Committee.

Magistrates' Clerk's Office,
34, Silver Street,
Lincoln.

LINCOLNSHIRE COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time Male Probation Officer for the Grimsby district.

The appointment and salary will be subject to the provisions of the Probation Rules.

The successful candidate will be required to pass a medical examination.

Applications should reach me not later than January 31, and should state date of birth, qualifications, experience in probation and social work, present employment and salary, and the names of two referees.

H. COPLAND,
Secretary.

County Offices,
Lincoln.

DERBYSHIRE COUNTY COUNCIL

APPLICATIONS invited for appointment of a Committee and Legal Clerk. Good experience in local government committee work essential. Salary—Grade A.P.T. VI (£670—£735). Pensionable post. Applications, stating experience, on forms to be obtained from D. G. Gilman, Clerk of the County Council, County Offices, Derby, returnable by January 17, 1953.

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